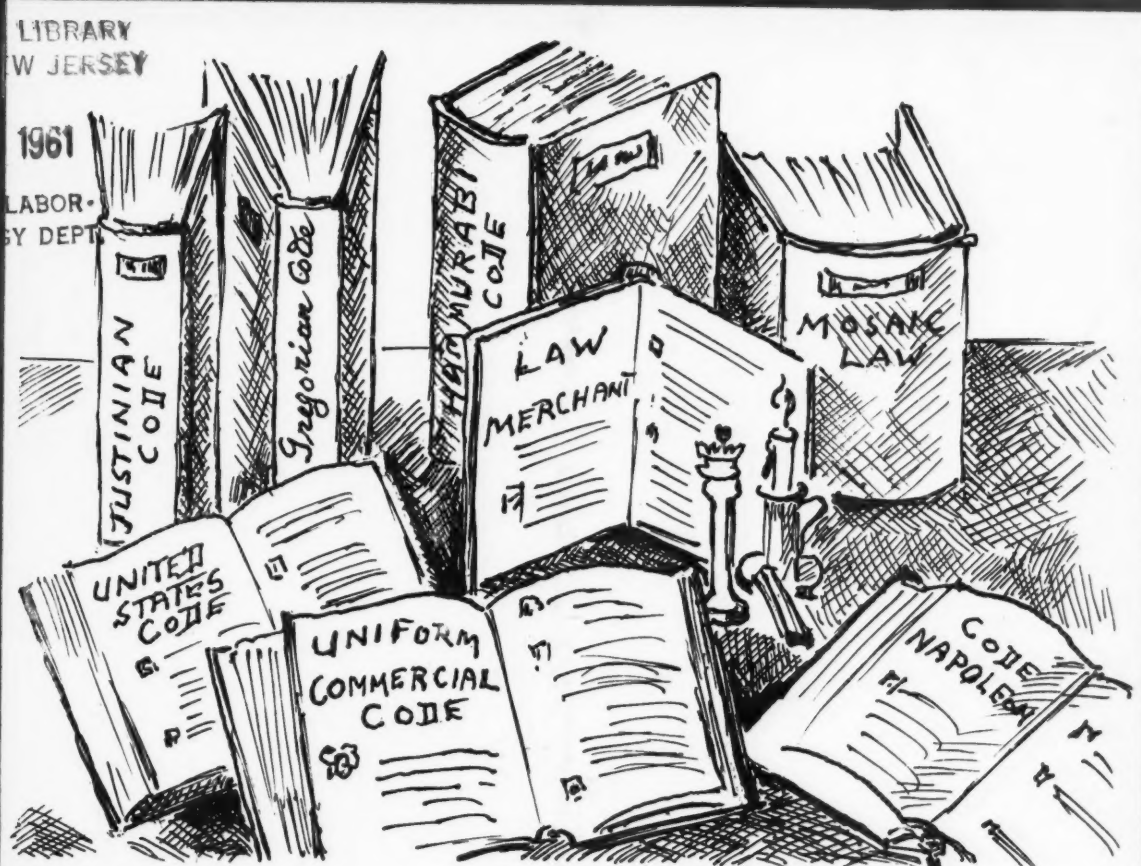


CREDIT  
AND

# FINANCIAL MANAGEMENT



*Legal Codes Down Through the Ages*

**FEBRUARY  
1961**

**NUMBER 2  
VOLUME 63**

**Changing Credit Practice under  
The Uniform Commercial Code**

*Attorneys Analyze Article Nine of  
Basic Instrument; Ohio's Proposed  
Code Is Debated; For and Against  
Oregon Bill in Panel at Portland*

*The Cover Picture*

*See Pages 5 and 8*


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The volume is free to only members of the New York Association.

### NFTC Calls for Increased Direct Investment Abroad

Pointing out that direct private foreign investments have provided a net gain for U.S. balance of payments, with outflow of such investment dollars only about half the inflow of dollar income returned to the U.S. each year from previous private foreign investments, the National Foreign Trade Council in a policy statement calls for "free, open capital markets coupled with an international climate favorable to the maximum feasible movement of productive private capital investment to all parts of the free world where needed, when needed." (See P. 6).

### Two State Fair Trade Laws Upheld by Supreme Courts

Virginia's supreme court has upheld the validity of the new fair trade act of the state, whose original fair trade act it had declared invalid. The ruling upheld a finding by law and equity court in favor of General Electric Company in a suit brought by Standard Drug Company, Inc.

A week earlier the U. S. Supreme Court left standing a Maryland court of appeals decision (*Gadol v. Peoples and Dart*) which upheld the right of one retailer to sue another for violation of the state fair trade law.

**When money talks, few people criticize its grammar.**

**—The Light**



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## EDITORIAL

### Sixty-Five Years of Service

**T**HIS spring the National Association of Credit Management will have reached its 65th birthday.

For an organization with a record of internationally-recognized achievement in legislation, in education, in business ethics and professional progress, a 65th anniversary allows for no resting on its laurels.

For the National Association of Credit Management, the past is merely a measure of the further growth and leadership necessary to meet the challenges that must come in a dynamic, competitive economy.

In its 65 years, the National Association of Credit Management has:

- developed credit practices based on a sound code of ethics, unflinchingly adhered to its course to keep the credit stream from pollution, and relentlessly pursued those who commit credit crimes;
- been responsible for the development of the most useful credit tool in modern business—namely the Credit Interchange report;
- maintained a policy of conservation with respect to distressed debtors, and has rehabilitated more businesses that were failing or in distress, than any other association or organization in the country;
- vigilantly watched all types of legislation affecting credit, and initiated much of our credit legislation in both the State and National Government;
- sponsored an educational training in credit that is without parallel in the nation;
- elevated the professional standard of the credit executive;
- sponsored a spirit of cooperation among credit executives that was undreamed of 65 years ago;
- initiated new services as they were needed, and assumed leadership in the field of commercial credit.

Elsewhere in this issue, we begin a series of articles which will outline clearly the services now available to the 36,000 members of, and the activities conducted by, the National Association of Credit Management.

For those of our readers who are long-time members, we urge careful attention to this series as a refresher. For those who are new to this Credit Association, a careful reading of the articles will surely reveal facilities which have not yet been taken full advantage of.

The measure of ultimate usefulness and success of an Association is the degree of active participation in its affairs and the extent of use of its services by its membership.

With your help, the 65 years of NACM's proud past will serve merely to proclaim its future.

*Alan S. Jeffrey*

EXECUTIVE VICE PRESIDENT

## THE FEBRUARY COVER

THE comprehensive study of the Uniform Commercial Code in this issue inspired the artist to delve deeply into the past and sketchily mention a few of the legal Codes adopted down through the years.

There is, for example, the Code of Hammurabi, "well-arranged and admirably phrased" set of edicts promulgated by the "greatest king of the first dynasty of Babylon (circa 1955-1913 B.C.)."

Discussants of the Uniform Commercial Code, beginning on page 8, present arguments for and against the instrument which has been enacted by six states and is expected to be introduced in 19 more state legislatures this year.

### In The News

JOHN H. FENNEMA, vice president and treasurer, Rhineland Paper Co., Division of St. Regis Paper Co., Rhineland, Wis., has been elected president of the Wisconsin State Chamber of Commerce.

E. W. McNALLY of McNally Tire & Rubber Company, Johnstown, Pa., was elected to represent Cambria County's Second District in the state legislature.

JOHN N. RALEIGH, assistant vice president of U.S. National Bank of Portland, Ore., is the new director of the technical division of NABAC, The Association for Bank Audit, Control and Operation, Chicago.

GEORGE A. NEWTON, elected president of the Investment Bankers Association of America, is managing partner in G. H. Walker & Co., St. Louis. He succeeds James J. Lee, partner, W. E. Hutton & Co., New York, as association head.

MEMBER of the National Association of Credit Management more than a quarter century, The Fife Electric Supply Company has moved into its new building in downtown Detroit.

A. G. WINDMEYER, of Chase Brass & Copper Company, has been elected president of the New Orleans chapter, National Institute of Credit.

# FINANCIAL MANAGEMENT

General Manager, Alan S. Jeffrey  
Official Publication of The National Association of Credit Management

VOLUME 63

NUMBER 2

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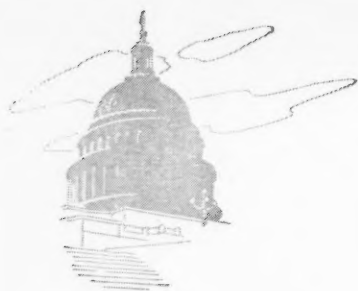
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# Washington

❏ LONG-TERM investment by American companies overseas brings the United States a net return of \$1 billion a year, twice the outflow of such new investment, says the National Foreign Trade Council, protesting talk of restriction prompted by confusing this area of activity with the short-term capital outgo due to high interest rates abroad.

Curbing long-term foreign investment would aggravate the payments imbalance, says the Council, which underscored the error of calling foreign aid, government loans, military expenditures and private long-term investment equal contributors to the deficit.

Free and open capital markets are called essential to combat the situation.

❏ WITH the pronounced improvement of U. S. foreign trade in the past year, some banking authorities foresee in the reduction of interest rates by four European countries a forerunner of a veering away from the heavy outflow of short-term investment funds, and that without protectionist moves or dollar devaluation.

As indicators they also note the strengthening of dollars against European currencies and the restoration of relative stability of the London gold market.

"The boom in Europe will not last forever", said Per Jacobsson, managing director of the International Monetary Fund, in a *Newsweek* magazine interview. "In addition, I believe there may well be a greater need for capital in the United States as population here grows faster than in Europe. There is therefore some chance of a reversal of this flow in the not too distant future."

The Federal Reserve Board is studying the banks' appeal to be permitted to pay such interest rates on short-term funds as will compete with the rates paid by European institutions.

The commerce department said final figures for 1960 may show our exports exceeded our imports by \$4.6 billions.

❏ Widening of the U. S. deficit in balance of payments was attributed by the commerce department to a net private capital outflow of \$864 millions in the third quarter, making the imbalance for the period \$1.152 billions, an annual rate of \$4.1 billions. The third quarter outflow brought a decrease of \$637 millions in U. S. gold holdings.

Noted excess of exports over imports in the

quarter was \$1 billion above the previous period, making the seasonally adjusted annual excess rate \$5 billions. However, the sharp rise in net outflow of private companies and government put the seasonally adjusted annual figure at \$9 billions, said the department.

❏ NOT an insignificant factor in our international payments imbalance is the fact that American companies produce \$35 billions of goods in other countries in a year. An official of the agriculture department estimated that the 1960 investment by Americans overseas would show at \$2.5 billions, one-third of it in Canada and almost that much in Latin America.

❏ PROVISION of more extensive credit and insurance aid by the Export-Import Bank—more than under the moderate expansion program undertaken recently by the Bank—is advocated by businessmen and government officials to encourage small businessmen to enter the foreign trade field and so add materially to exports.

At a New York hearing, businessmen and U. S. Senators J. K. Javits, H. A. Williams and Jennings Randolph, a unit of the Senate Small Business committee, explored ways in which the smaller companies might help to right the deficit in U. S. international balance payments.

Also suggested were an increase in the number of export promotion exhibits featuring small business; establishment of a center to train representatives of small companies for selling abroad; inauguration of more counseling and informational services.

Our government is setting up a trade center in London this spring to build sales of farm products in the United Kingdom, by providing wider knowledge of U. S. agricultural output.

❏ INVESTMENTS of the Commodity Credit Corporation in price-support programs eased slightly from November a year earlier. Price-supports were chiefly on wheat, cocoa, cotton, tobacco and grain sorghum.

❏ TWENTY-SIX business indicators have been revised by the National Bureau of Economic Research for its tracing of cycles. And the joint economic committee of Congress has recast its format of monthly "economic indicators".

The net result all around is development of more information.

The joint committee for the first time gives a page to balance of payment.

❖ **FORECASTS** by the commerce department that auto production this year will drop 13 per cent were not welcomed with enthusiasm at the motor capital by the industry, which now holds that the output of new cars will be at least as much as in 1960. The federal department sees U. S. passenger car output in 1961 at 5.8 millions (the 1960 estimate at 6.7 millions, second best ever).

Frederick G. Donner, chairman General Motors Corporation, called fourth quarter sales close to those of the record period in 1955.

The department, through its business and services administration—which is in continuous contact with business and at year-end turns out approximately 80 reports on industries—again sees no import threat to production. Foreign car

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**OFFICIAL TEXTS** — of all mobilization agency regulations may be had, free of charge, by writing the Information Division of the agency involved, Washington 25, D.C.

**THE FEDERAL REGISTER**—a Government daily publication, which contains full texts of all regulations, is available from the Superintendent of Documents, also at Washington 25, D.C.

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imports in the first three periods were 23 per cent below the 1959 level.

In fact, greater impetus to U. S. car sales abroad is in the making, to take advantage of the European boom. Worldwide production of cars and trucks last year actually exceeded that in the United States—13.9 units against 6.7 millions.

While auto sales have a marked influence on U. S. business activity as a whole, the impact is not as pronounced as commonly supposed, according to the commerce department report.

❖ **FIXED INVESTMENT** in Britain's economy is likely to continue rising this year, said its National Institute of Economic and Social Research, but at year-end the economic expansion had slowed down so that output probably was no higher in the third quarter than in the first. Exports dropped between those periods, consumer spending did not repeat its earlier surge, more of the total expenditure went for imports, a smaller portion for home products.

❖ **GOVERNMENT** and business have become partners in a vast program to provide economic security in old age, and "to the extent that the business community fails to fill its 'quota' of security, the government will surely underwrite the 'deficit'," Dr. Dan M. McGill, professor of insurance at Wharton School of Finance, Uni-

versity of Pennsylvania, told members of the Life Insurance Association of America, in convention in New York.

Declaring that private pension plans as currently constituted do not assure participants of the "ultimate enjoyment of the potential benefits", Dr. McGill urged enactment of state laws to cover most phases of pension management. He said 20 million persons were enrolled in such plans, with more than \$40 billions set aside in trust or with life insurance companies to meet benefits expected under 25,000 plans. He proposed accreditation of pension actuaries, employee purchase of annuities from a legally licensed insurer.

Eugene M. Thorè, vice president and general counsel of the association, said the day is coming when the insurance industry will be more and more expected to match protection of stockholders' interests with welfare of the nation.

William P. Worthington, president of Home Life Insurance Company, was elected head of the association.

❖ **IN** the fortnight before Christmas, tax payment period, business made the largest borrowings (\$334 millions) since March (\$345 millions). Besides direct borrowings at banks, corporations cashed in maturing commercial paper bought from sales finance companies, which in turn caused the latter to borrow heavily from the banks.

The Federal Reserve System reports an increase of \$879 millions in average credit granted against uncollected checks, boosting such credit to a post-1956 record; a rise of \$93 millions in foreign holdings of U. S. Treasury securities to an all-time high; heavy net sales, by FR banks, in various categories from Treasury bills to bonds; a marked drop (averaging \$237 millions) in "other deposits" of FR; a sharp rise in money in circulation.

❖ **WHEN** the U.S. Supreme Court refused to review a ruling of the U.S. court of customs and patent appeals (*U.S. v. Schmidt Pritchard & Co., Mangano Cycles Co.*), it limited the President, in escape-clause import actions, to accept or reject in entirety the recommendations of the tariff commission.

Section 7 of the Trade Agreements Extension Act of 1951 (the "escape clause"), as amended, provides for relief of domestic industries from foreign competition when the tariff commission so recommends to the White House.

The customs court ruling stated in part: "The President may proclaim adjustments in rate of duty but he need not do so . . . However, if the President decides to make an adjustment in rate of duty, he must proclaim the change which is recommended to him by the tariff commission."

Restrictions on bicycle duties and on imports of stainless-steel flatware, spring clothespins, lead and zinc had been set up after modifications of tariff commission recommendations.



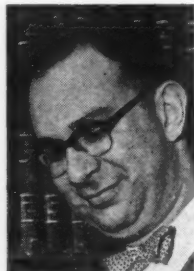
# Changing Credit Practices under

By **W. J. LEDBETTER**  
**ALVIN GALLEN**  
*Members — New York Bar*

**T**HE Uniform Commercial Code is a comprehensive revision of private commercial law in the fields of sales, negotiable instruments, documents of title,



W. J. LEDBETTER



ALVIN GALLEN

stock transfers, security transactions and related subjects.

In those states where it has been adopted, it supplants a variety of statutes and common law doctrines developed piecemeal through the years. In many instances, these laws were outdated by modern business practices.

The first state to adopt the Code was Pennsylvania, where it became effective July 1, 1954. It has since become law in both Massachusetts and Kentucky, and will become effective in New Hampshire July 1, 1961, in Connecticut Oct. 1, 1961, and in Rhode Island Jan. 2, 1962. Conceivably, the Code may be in effect in a majority of states by 1970.

The Code is divided into ten articles, of which Article 9, covering secured transactions, is generally considered of most importance to creditmen.

We will deal primarily with only

**D**ISCUSSIONS, pro and con, of aspects of the Uniform Commercial Code, by representatives of the legal profession, banking and credit management, are presented herewith. Six states have enacted the Code; it is expected to be introduced in the legislatures of 19 additional states this year.

First is an analysis of Article 9 by two members of the legal staff of General Electric Company, New York. On page 10 are comments from Oregon panelists; on page 11, from two participants in a seminar in Ohio.

those portions of the Article which represent the most radical departure from existing practices and which seem most likely to be encountered by the average creditman in his normal course of business. It is strongly recommended that all credit men consult their legal counsel on the meaning and implications of the Code to their business.

## *New Terminology*

One of the fundamental reforms of the Code is to disregard the traditional label of a transaction; that is, the interest of the secured party is treated in the same fashion under the Code regardless of the label placed on it. Under Code terminology, a "security interest" is given by a "debtor" to the "secured party" and the transaction is evidenced by a "security agreement." Terms such as "pledge," "conditional sale" contract, "chattel mortgage," "trust receipt," and similar terms are ignored. However, these older forms of identification are not illegal under the Code. The parties to a transaction may identify the transaction in any way they choose; however, the resulting security document will give the secured party a "security interest" in the collateral.

Article 9 applies to any transaction intended to create a security interest in any personal property or fixtures, and to any sale of accounts receivable, contract rights, or chattel paper. By "chattel paper" the Code means conditional sale contracts, chattel mortgages and the like. Some

exclusions from this general rule under the Code are security interests in real property, in goods subject to such federal statutes as the Ship Mortgage Act, in equipment trusts covering railway rolling stock and some special situations.

Another change made by the Code is in trust receipt financing which now generally requires three parties. The Code does away with the need for an outside financier, so that two parties—the buyer and the seller—may establish a valid security interest in any form of collateral covered by the Code.

In connection with inventory financing, the Code specifically abolishes the *Benedict v. Ratner* doctrine which was developed as a means of preventing secret liens in situations where the debtor was given full control over the collateral. The doctrine provides that an arrangement which permits the debtor to dispose of collateral without being required to account for the proceeds, or substitute new collateral, is invalid as against creditors of the debtor. The doctrine has therefore required very tight "policing" of debtors' conduct in order for the creditor to protect his secured position. The evils of a secret lien, which the *Benedict v. Ratner* doctrine sought to eliminate, do not exist when the lien is filed as the Code provides.

Another major innovation introduced by the Code is the "floating lien," which has long been recognized in England, but which has had

## **NOTE**

*The opinions expressed by the individuals in this symposium on the Uniform Commercial Code do not necessarily represent those of the National Association of Credit Management or of this publication.*

# The Uniform Commercial Code

very limited use in the United States. Under this device, a creditor may maintain a continuing lien on the property of his debtor, including property acquired after a security interest is given, while still permitting the debtor to deal freely with the property in the normal course of his business until default, at which time the lien becomes fixed and the creditor can enforce his claim.

It would seem that the "floating lien" will be particularly useful in inventory financing since it will substantially decrease the amount of paper work, control, and other expense now required to maintain proper security. The Code does not expressly use the term "floating lien" but it effectively provides for such a device by:

—Specifically approving future advances and after-acquired property clauses.

—Insuring the validity of a filed security interest which uses generic descriptions of goods (as distinguished from "serial number" descriptions).

—Authorizing the "perfecting" of a security interest created over an extended time by a single filing.

—Making it clear that the lender who first files a financing statement takes priority over all other secured parties, except that any other party who notifies the lender of his intention to make purchase money advances will have priority to the extent of advances actually made.

Creditmen should recognize that, while a floating lien greatly simplifies the paperwork involved in financing inventory, the floating lien device should not be used to tie up unnecessarily all a customer's assets so that he cannot secure additional needed financial aid. The creditman must also be meticulous in determining whether some other creditor has filed a financing statement which would establish a floating lien.

Under Article 9, the financing of industrial equipment may fall under one or more of these headings: "equipment," "fixtures" or "accessions."

In equipment financing, the Code specifically reflects existing law. When the seller perfects his security interest, he is protected against all subsequent creditors and purchasers. If there are prior perfected security interests, the debtor's interest in the equipment will be senior to the prior interest if the later security interest is perfected at the time the buyer receives possession of the collateral.

The Code makes a drastic departure from tradition in regard to *fixtures*. It abandons the rule that a security interest in equipment is lost

their identity in a manufacturing process, the creditor's security interest continues in the final product and ranks proportionally with security interests in other goods processed into the mass.

## Creating a Security Interest

The Code provides new rules for the procedures by which security interest may be established. Two significant mileposts in the development of a security interest are when it "attaches" and when it is "perfected." When a security interest "attaches," it is effective between the parties but not against most third parties. When a security interest is "perfected," it is effective against third parties.

A security interest "attaches" to a property when three conditions are fulfilled:

1. The debtor has rights to the property.
2. There is agreement between the debtor and creditor that the security interest shall "attach."
3. Value is given by the creditor.

In general, a security interest can be "perfected" by possession or filing. In the first instance, the security interest is perfected when the property is in the possession of the secured party. This provision simply recognizes the well established law regarding pledges. However, the Code does not expressly declare whether or not constructive possession is sufficient to perfect the security interest. Therefore, prudent creditmen should probably not rely on a field warehouse arrangement, for example, in a Code state, without a filing to perfect the security interest.

In filing, the Code has made a significant contribution. The only document which need be filed for any security interest is a "financing statement." According to the Code:

"a financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which infor-

(Concluded on page 38)

## Texts Available

*Complete texts of the following Articles of the Uniform Commercial Code are available to NACM members on request:*

*Article 2 on Sales, Article 6 on Bulk Sales, and Article 9 on Secured Transactions.*

*Write Legislative Department, NACM, 44 East 23rd Street, New York 10, N.Y.*

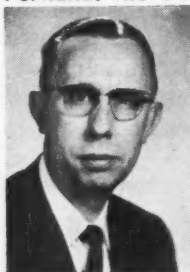
when the equipment is attached to real property in such a way that the equipment cannot be removed without substantial damage to the real property. The Code protects the creditor from the vagaries of other state laws which might well apply if the creditor perfects his security interest *before* the equipment is attached to the real property. Under the Code, you may remove the fixed property if the buyer breaches his obligation and if you repair the physical damage to the real property created by the removal of the equipment. Creditors are not required to pay anything for the lessening of value of the real property resulting from removal of equipment.

The rules governing the installation of goods in, or to, other personal property are substantially the same as those governing fixtures.

Even if the equipment or goods subject to your security interest lose

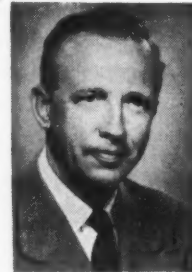
# For and Against in Portland Panel

**M**EMBERS of the Oregon Association of Credit Management learned firsthand of the scope of changes covered by the Uniform Commercial Code at a panel presentation in Portland. The Code is to be introduced early this year in the Oregon legislature.



E. W. POGUE

The moderator, E. W. Pogue, general credit manager Hyster Company, introduced panelists Clifford Zollinger, vice president in charge of legal staff, First National Bank of Oregon, chairman legislative committee, Oregon Bankers Association; R. R. Bullivant, partner in Pendergrass, Spackman, Bullivant & Wright, member National Conference of Commissioners on Uniform State Laws; and Mrs. Georgia Noble, credit manager Blake, Moffitt & Towne.



R. R. BULLIVANT

Mr. Bullivant presented a brief, understandable explanation of Article 9 on secured transactions and the procedures for handling. He described the advantages to secured creditors and told how a creditor could take a secured position by simple filing of a financial statement showing that a security agreement had been entered into between debtor and creditor, the agreement supplanting the provisions of present laws on such instruments as conditional sales contracts and chattel mortgages.

Herewith are the presentations by Mr. Zollinger and Mrs. Noble.

## Proposed Oregon Code Called Good and Understandable Job

By C. E. ZOLLINGER  
Vice President — Legal Staff  
First National Bank of Oregon, Portland

**T**HE proposed Uniform Commercial Code for Oregon is a good, clear, legible job of printing. More important, it is a good, clear, understandable job of writing.



C. E. ZOLLINGER

Article 1 contains definitions, rules of construction and general provisions.

Article 2 concerns sales and conditional sales. It is much more complete in its treatment of these subjects than the Uniform Sales Act and the Uniform Conditional Sales Act.

Article 3 concerns commercial paper. It takes the place of the Uniform Negotiable Instruments Law. It changes some rules which were inherited from the days of sailing vessels and settles others on which there is a conflict in the judicial decisions.

Article 4 relates to bank deposits and collections. It is a definition of rights and duties of the depository banks, the collecting banks through which an item is forwarded, and the drawee banks—more clear, more complete and more in harmony with business practice than prior legislation on this subject.

Article 5 concerns letters of credit which have not

(Continued on page 30)

## Tells Tale of Luckless Turtle: Shell Protected Him to Death

By MRS. GEORGIA NOBLE  
Credit Manager  
Blake, Moffitt & Towne, Portland, Oregon

**O**NCE there was a turtle who was proud of his beautiful shell. It protected him from the rain, shielded him from the sun, and made it possible for him to venture forth into new places. But a strange thing began to happen. The shell began to grow. It protected him even more from the rain and the sun. And still the shell continued to grow and grow and grow. Then one day the turtle found the shell completely protected him—and he was neither able to eat nor walk. And so he died.



MRS. NOBLE

Now, I am not an attorney and cannot debate with attorneys on the legal technicalities of the proposed Uniform Commercial Code. I am concerned, however, about Article 9, dealing with secured transactions. As suppliers, selling on an unsecured basis, I feel our customers—like the turtle—would find themselves totally encumbered with all of their assets subject to mortgages or liens, unable to obtain the necessities to stay alive, the merchandise necessary to stay in business.

Let us look at the general theory behind Article 9 dealing with secured transactions. In simplest terms, it means that all assets of a business will be available as security for loans, financial or mercantile, for any obligation currently existing or arising in the future. This

(Continued on page 31)

# Ohio's Proposed Code under Debate

THE articles on this page, by Hugh Wells and Boris Auerbach, are from their addresses at a Cleveland Credit Seminar on "The Proposed Uniform Commercial Code for Ohio." The Seminar was conducted jointly by Bowling Green State University and the Credit Association of Northwestern Ohio. Other panelists were Dr. Russell Decker, J.D., associate professor of business administration, Bowling Green State University, and Lawrence J. Burns, counsel to the public affairs committee of the Ohio Bankers Association.

## Coordinator Sees Article 9 as Credit Aid to Small Business

By **BORIS AUERBACH**  
*Coordinator, National Conference of Commissioners for Uniform State Laws*  
Columbus, Ohio

ONE of the major bills to be considered by the General Assembly this year will be one which seeks to incorporate the Uniform Commercial Code into Ohio law.



BORIS AUERBACH

In 1959, the Code was passed by the House and was unanimously recommended for passage by the Senate judiciary committee, but the Senate adjourned before final action could be taken.

The Code was prepared jointly by the National Conference of Commissioners on Uniform State Law and the American Law Institute. The former is an organization of officers designated by the states to consult with similar officers of other states with a view to promoting uniform legislation throughout the United States. The American Law Institute is an unofficial association of judges, lawyers, and law professors which was formed in 1923.

The purpose of the Code is to:

- (a) Simplify and modernize and develop greater precision and certainty in the rules of law governing commercial transactions;
- (b) Preserve flexibility in commercial transactions and encourage continued expansion of commercial practices and mechanisms through custom, usage and agreement of the parties;
- (c) Make uniform the law among the various jurisdictions.

The Code has been in effect in Pennsylvania since July 1, 1954, and in Massachusetts since Oct. 1, 1958. These two leading states have served as excellent laboratories in which to test the practical workings.

Article 1 contains those definitions which are to be used throughout the Code as well as several other general sections.

Article 2 is in large part a revision of the Uniform Sales Act which deals with the rights of buyers and sellers under a sales contract. The most striking change

(Continued on page 14)

## Attorney Sees Clash between Code and the Bankruptcy Act

By **HUGH WELLS**  
*Partner*  
*Wells & Marks, Attorneys-at-Law*  
Cleveland, Ohio

ARTICLE 9 of the proposed Ohio Uniform Commercial Code will substitute security agreements for chattel mortgages, conditional sales contracts, assignments of receivables, trust receipts, etc., and will eliminate all the effectiveness of the case law involved which has been developed in Ohio in the last 157 years since Ohio became a state. It is a very serious piece of legislation and should have the careful consideration of every man and woman in Ohio. It will be presented to the next legislature.



HUGH WELLS

If the State of Ohio should lose all of the methods of handling secured transactions now in existence and all cases and law supporting this method of handling these transactions, what will the State of Ohio receive in its place? It will receive the Uniform Commercial Code.

In all of our opposition to the Uniform Commercial Code we must keep in mind that it favors the secured creditor. The unsecured creditor is the forgotten man. Every businessman in Ohio is an unsecured creditor in most of his business transactions. He should, therefore, inquire as he reads this Article whether this legislation is for his welfare.

### *The Floating Lien*

Suppose we see what will happen to the unsecured creditor when the floating lien becomes law.

In Ohio today there can be no lien upon a moving stock of merchandise. (See *Francisco v. Ryan* 54 Ohio State 307.) The theory is that a lien upon a moving stock of merchandise has too many elements of or possibilities for fraud.

The result is and has been that there is always a certain amount of free assets in most cases to pay judgments, taxes, labor and a dividend to general creditors. In bankruptcy court, dividends for general creditors are paid in millions out of these free assets.

Now then, suppose a lien is placed upon these free

(Continued on following page)

assets in favor of the secured creditor, what happens?

A typical example would be where a finance company would have a lien on all the assets including the inventory, all the accounts receivable, and the cash of the "A" company. The "A" company goes into bankruptcy. The order of disbursement now will be as follows:

1. All secured claims including the lien on inventory;
2. The court costs and attorneys' fees;
3. Labor;
4. Taxes;
5. General creditors.

The costs, labor and taxes are priorities and have always been paid ahead of the general creditors. However, the lien on inventory will go to the head of the list and the unsecured creditor will lose any chance for dividend out of what were once free assets.

Second example:

The "A" bank loans "B" \$10,000. "B" pays it down to \$1,000. "C" then loans "B" \$5,000 and "A" loans "B" another \$10,000. "B" goes bankrupt. Under the Code, the first lien is "A" for \$11,000. The lien becomes fixed as of the date of the first loan. "C" is probably out.

The secured creditors have always had a free ride in bankruptcy. They have paid none of the costs of administration and have received their money without deduction for any charges. It would appear that, if this law passes, the secured creditor will get all of the assets until he gets paid 100%, and only the excess over and above that 100% will go out to pay labor, court costs, taxes, and, finally, the general creditors. In other words, the secured creditor will be protected through a lien on inventory and accounts receivable and cash on hand, in addition to the security he has had heretofore, and the general creditors will be wiped out.

#### **Monopoly of Credit**

Today, that is, in the pre-Uniform Commercial Code era, a merchant or manufacturer can secure credit from many sources—from the bank, from the manufacturer, from the finance company. He can secure this obligation to these various parties by chattel mortgages, conditional sales contracts, trust receipts, real estate mortgages, etc.

Suppose, however, that a bank had a floating lien on all of the assets of the merchant or borrower; do you think anyone else would sell or extend any credit to this merchant? The tendency would be to have all the borrower's credit concentrated with one lender and all the sales with one vendor. The only safe way that any new credit might be extended to this party would be for the vendor to get a subordination agreement from the holder of the floating lien and the chances are that he would not succeed. A vendor will not willingly give up an advantage.

#### **Loss of Credit Information**

If the bill passes the legislature, the security instrument which will be filed will not describe the assets covered by the lien. It will not have an affidavit on it stating the amount of the loan or the obligation. At the present time, the chattel mortgage or conditional sales contract describes the assets covered by the lien and gives the amount of the loan or purchase price. This information is valuable to anybody extending credit and any organization checking credits.

Do you want to lose this information? You certainly will if the Uniform Commercial Code passes.

### **Code Panel at Credit Congress**

*A panel discussion of Article 9 of the Uniform Commercial Code, as it affects the unsecured creditor, will be a highlight of the 65th Annual Credit Congress in Denver May 14-18.*

*Ivan L. Hillman, treasurer of Dravo Corporation, Pittsburgh, will be the moderator. (See Page 34)*

The proponents argue that it will give the merchant or the borrower a broader base for borrowing. This may be so, but it will certainly be hostile to the interest of the general creditor, the unsecured creditor, and will have a tendency to create a monopoly of credit. This does not appear to be an advantage over the present system. It would appear that we would sacrifice many values and advantages which we now have.

#### **Recording**

At the present time chattel mortgages and other items are recorded with the recorder of the county where the domicile of the mortgagor is located, or, if the mortgagor lives outside of the state, then in the county where the assets are located. This procedure is simple and easy.

What does the Code provide? It says that the financing statement must be recorded in the state capitol, that is, in Columbus, with the secretary of state, and also with the recorder of the county where the debtor's business is located, or, if the item is attached to the real estate, then in the county where the real estate is located.

You will inquire as to which is the more efficient and the more sensible and the simpler system of recording. The answer is self-evident. The Uniform Commercial Code is not an improvement.

#### **Conflicts with the Bankruptcy Act**

Any discussion of the Uniform Commercial Code in its relation to bankruptcy inevitably becomes technical. Bankruptcy is a lawyer's field and is a specialty. However, most creditmen have some knowledge of the Bankruptcy Act and procedure.

We will try to point out some of the conflicts between the Bankruptcy Act and the proposed Code so that the reader may gain a clearer comprehension of the Code and may try to do something about it.

First, we repeat: If the floating lien as provided in the Code goes into effect, the free assets such as inventory, accounts receivable and cash will be covered by the floating lien and the general creditor will fare very badly. It looks as though he will be closed out entirely and will get no return from cases in or out of bankruptcy.

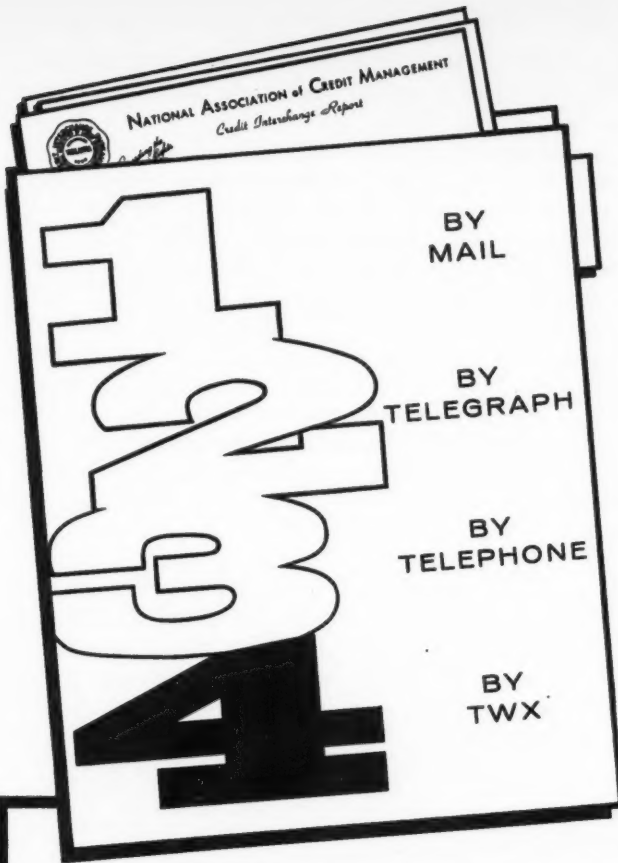
The word "floating", as referring to a floating lien, is a term which describes a lien which floats over the assets of the debtor or borrower from the first loan to the last one, covering all inventory, accounts receivable and cash as well as specific items.

Following is one very important conflict between the Code and the Bankruptcy Act. Under the latter, a preference is perfected when a creditor receives within four months of bankruptcy more assets from the debtor than

*(Concluded on page 14)*

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the other creditors received at a time when the debtor was insolvent and the creditor had reasonable cause to believe he was insolvent, and it is for a past consideration.

The Code, on the other hand, says that the transfer shall be deemed to be taken for a new value and not for a pre-existing debt. In other words, the past consideration element is wiped out, and if the Code is recognized in the Bankruptcy Court, Section 60 of the Bankruptcy Act will be practically invalidated.

Another section of the Code would give the lender an amount equal to all the proceeds received by the debtor within 10 days prior to the filing of a petition in bankruptcy.

Under the Bankruptcy Act the secured party gets or secures his identifiable security and any proceeds received by the debtor from the sale of lien assets if the secured party can trace the funds. It is practically impossible to trace the funds into the bank account, and, therefore, the courts are not too much bothered with attempts by secured parties to recover the proceeds from the sale of their secured assets just prior to bankruptcy.

The Code would appear to provide that assets belonging to the other creditors would be paid or could be paid to the secured parties.

Another section of the Code states quite frankly that a financing statement need not be filed if the accounts receivable pledged are "insignificant." Suppose, in a case in bankruptcy, a secured creditor comes along and files a reclamation petition asking for all of the accounts receivable in the estate and the money collected from those accounts receivable because they were pledged with him under the Code, but he did not record the financing statement because the amount was insignificant. Do you think for one moment the referee in bankruptcy will grant such a reclamation petition?

#### "Any Description"

Next we would refer to the section of the Uniform Commercial Code which says:

*"For the purposes of this article any description is sufficient whether or not it is specific if it reasonably identifies the thing described."*

Frankly, we do not know what the words "any description" mean. Under our chattel mortgage law as interpreted in bankruptcy, the lien holder must describe his property by location, by serial number, and these descriptions must be in the instrument. It would seem that this loose language of the Code will open the door to plenty of trouble.

The foregoing are some of the main conflicts between the Code and the Bankruptcy Act.

We find an interesting example of one of the conflicts with the Bankruptcy Act in the case of *in re Kravitz*, where a creditor sold to the bankrupt before bankruptcy and claimed a return of his merchandise under the ten-day rule.

The court held that the trustee is in the position of an execution creditor and the lien of the execution creditor is ahead of the lien of the claiming creditor. This was in the District Court of Pennsylvania for the Eastern District on Dec. 12, 1958.

It is quite apparent when there is a conflict between the Bankruptcy Act and the Code, the Bankruptcy Act seems to come out ahead.

It would appear also that the floating lien will come ahead of taxes. However, we will not expect the Collector of Internal Revenue to sit idly by and permit any lien set forth in the Code to beat him out of his taxes.

An example of this is the case of *United States v. Ball Construction Company*, 355 U.S. 587, which held that an assignment by a debtor, a construction company, to the surety company of future monies to be paid on the contract was inchoate and, therefore, the tax lien came ahead of the payment of money to the surety. This theory of choate and inchoate liens is the argument of the government for priority in favor of the government. In other words, a tax lien will come ahead of the floating lien if the floating lien is inchoate.

What about the place of labor in bankruptcy cases? Labor claims in the past have been paid after the cost of administration but ahead of taxes and ahead of general creditors. The floating lien may crowd the labor claims out. It certainly will go up ahead of them in the order of disbursement.

We think the Act should not be passed.

## AUERBACH

## BEGUN ON P. 11

is the subordination of the highly technical concept of title as the prime determinant of the rights of the parties under a sales contract. Such problems as the time when the risk of loss passes, the liability of the buyer for the price of the goods, the place and time for measuring damages, and the period when the buyer has the power to reject are taken care of in each of these situations by specific sections defining the rights of the parties.

In revising the Sales Act, the drafters of the Code have given greater recognition to actual mercantile understandings in regard to the formation of contracts and the legal effect of widely used classes of sales contracts. The Code also has made the remedies available to the aggrieved parties more comprehensive and equitable.

#### Negotiable Instruments Law Revised

Article 3 is basically a revision of the Negotiable Instruments Law. Unlike the present law, however, this Article does not cover corporate bonds which are treated separately in Article 8. In addition, matters pertaining to bank collections, security transactions, and letters of credit are treated elsewhere. This Article was designed to clear up conflicting interpretations arising under the present law and to "streamline" and modify the present law, including the elimination of a number of archaic provisions which apparently never have been used to any extent.

Article 4 would not replace any existing uniform law nor would it replace in Ohio any comprehensive statutory regulation in this field. The principal sources of the existing rules governing bank deposits and collections include a number of sections of the Negotiable Instruments Law; some case law; the Federal Reserve Act; Federal Reserve regulations, operating letters, and circulars; Clearing House rules; contractual agreements; bank customs

(Continued on page 40)

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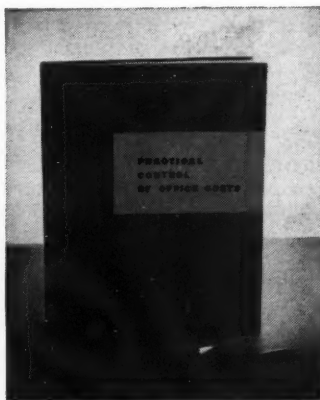
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**Eight ways to use Universal Office Controls**—You can get *factual* answers to questions like: Who are our best workers?... Should we mechanize our office work?... How much does each report cost?... Should we use temporary help.

**How to apply Universal Office Controls**—Here are the steps to take to control costs with Universal Office Controls. Sample forms are given, plus a caution on how to avoid human relations problems.

**Ten questions that test the efficiency of your office**—Symptoms of poor efficiency will stand out when you observe the office in the light of these questions. Or you can use work sampling, which is described.

**How to organize definite tasks for the office force**—Here is the easy, systematic way to assign definite tasks, using task lists and work distribution charts.

**How to establish effective methods in the office**—A review of the two chief techniques for testing and improving the efficiency level of your present office methods.

**How to set time standards for office tasks**—Here, in step-by-step form, is a case example of how to create sound time standards that can be easily attained by the average worker.

**How to install your program of Practical Office Control**—Based on experience in firms where this program has been profitably used, you get a plan of action to take, and pitfalls to avoid.

**Universal Office Controls standard data**—Here are the actual tables of working data, giving established time values for approximately 95% of the elements of office operations.

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**E**XPANSION of supermarket chains, increase in the formation of cooperative companies and the development of group buying associations have placed a tremendous obstacle in the path of successful operation by the small meat market. Many such markets, which provided their owners with a good living in former years, have closed their doors in the face of heavy competition and diminishing profits.

Nevertheless, thousands of these individually owned and operated stores remain in business, offering the meat packer a fertile field for profitable business. They also present to the credit department a real challenge in customer relations and credit management. Many in the group are financially sound; probably just as many more must be classified as marginal, in fact, as very doubtful credit risks, on the surface. It is this latter group which affords the credit department a special opportunity to make profits for its company.

Lines of credit are short in the sale of meat and meat products—seven days—and bad debt losses must be held to a minimum because of the extremely low margins of profit, called the lowest of any major industry in the country. At the same time, the perishable nature of the product and the fluctuating market make imperative that the product be moved rapidly and continuously.

These factors, combined with repeat sales to a retailer, can present the credit manager with a dilemma which brooks no delay of solution. Even with the short terms an account

## MANAGEMENT AT WORK

*.... a problem case is solved*

by VICTOR A. BELL, Credit Manager  
Gwaltney, Incorporated, Smithfield, Virginia

may become a problem involving several thousands of dollars. The line dividing profits from losses is narrow and nebulous, and when the number of such cases is considered, effective action is needed to prevent excessive investment. Here is where the credit manager can be of real and lasting value to his company.

One of our customers was in dire financial straits. He operated his business on a shoestring, a prayer and a bank loan. Because of problems of accounts receivable and inventory his operational situation deteriorated until about the only asset available was his fierce determination to succeed. We were involved to the extent of \$2,000. Though the outlook was dismal, we felt it was not completely hopeless.

After examining all possibilities with our customer we arranged a conference with his banker. Agreement was reached on re-financing his bank loan and we took a note for the amount then due us. In addition, a system of credit was set up whereby the customer could make purchases up to \$500 a week on regular terms, any excess to be paid for at the time of delivery. The bank also agreed to guarantee all checks payable to us up to \$1,000 a week.

The immediate pressing financial arrangements having been disposed of for the moment, we sat down with our customer to examine his operations. We were able to point out some procedures which we felt were faulty and to suggest remedies or improvements to cut costs and increase profits. These were adopted.

The ensuing years were no bed of roses for the customer or for us. Payments on the bank loan and on our note were made as agreed, but making these payments, meeting current obligations and remaining solvent required considerable plain and fancy footwork. We fussed and our customer fumed, but in the end all outstanding obligations were met, our note was paid in full and the bank loan reduced to a manageable amount.

Today this man is a \$100,000 a year customer. Even now we bark and rant, back and forth, but he respects us and we respect him. We still limit credit sales to him to an agreed amount but this is not a hardship; in fact, we are in agreement



**REVIEWING** the history of the customer rehabilitation program described in the accompanying article. Left to right: George E. Hamilton, Jr., sales manager of Gwaltney Incorporated, Smithfield, Va.; Walter H. Shearin, assistant secretary-treasurer, and Victor A. Bell, credit manager.

**VICTOR A. BELL**, who has the Executive Award of NACM's Graduate School (Dartmouth 1960), joined Gwaltney, Inc., Smithfield, Va., in 1942 as an accountant, and after a year was transferred to the production department.

In 1948 he was sent to Kinston, N.C., as assistant secretary-treasurer of Gwaltney Packing Company. Returning to Smithfield in 1953 he was named credit manager of the parent company.

Mr. Bell attended the College of William and Mary at Williamsburg, Va.

that this practice is mutually advantageous.

There is close rapport in our sales and credit departments. No hard and fast set of rules governs our actions, for we feel that the conditions and circumstances prevailing at the time have much to do with the solution of any credit or sales problem. We approach it with an open mind endeavoring to gauge our actions by predicted results. We have found that nuggets of gold often can be discovered in unlikely places; that persistent probing and careful cultivation can turn a seemingly barren waste into profitable sales.

In our dealings with marginal accounts we proceed on the basis of possibilities, probabilities, pride and pocketbooks. Possibilities and probabilities involve estimating the potential in sales and in payments. Pride is the intangible factor of the inherent desire of a man to grow, to stand on his own feet, alone and self-sufficient. Pocketbooks, of course, are finances, the wherewithal to provide a measure of security. We are fortunate in that our salesmen have close and continuing contact with our customers and are able to provide first-hand information so valuable in judging these accounts. Thus we can appraise them fairly accurately.

There are occasions when our judgment is faulty but the scales are more than balanced by expanded sales in an area which is good for us.

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**T**HE DAY you join your local credit association you automatically become a member of the National Association of Credit Management, with which it is affiliated. Membership entitles you to voting privileges and a share in the control of NACM, through 32 elected officers and directors, all fellow members who proportionally represent the four regions of the United States in which the 124 affiliated local credit associations are located.

A portion of your local membership dues is allocated to the national association. This pays for activities and services to benefit you and your profession. The more you know about what the national organization does—and why—the better you will be able to exercise your membership privileges, appreciate the advantages of professional association, and enjoy specific benefits.

There are many. And all are available to you as a member-owner of the non-profit organization representing the credit profession—its men and women, its immediate needs, long-range goals, ideals, and a desire for greater company and public recognition.

The slogan of the NACM is *Guarding the Nation's Profits*. Here are the NACM activities that do this:

**LEGISLATION** — Today, credit transactions can be made with a fair degree of certainty that creditor's rights will be protected. The NACM presents the facts to legislators when a substantial proportion of members believe that certain laws affecting credit and finance should be enacted, modified or repealed. Also, through bulletins, the national Legislative Department keeps members posted on pertinent federal legislation.

The legislative program was one

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## *How to Make the Most of Your Association*

**W**ITH this article, *Credit and Financial Management* magazine introduces a new series of stories on your credit association—its privileges, activities, services, and professional benefits.

*The 36,000 members from the credit profession make the National Association of Credit Management one of the largest professional organizations. Here is a quick review of the total services that the NACM offers you, if you take full advantage of your membership.*

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of the primary purposes in founding a national association of business credit executives in 1896. The original bylaws stressed the urgency of a legislative program in these words: "The object of this Association . . . shall include a demand for a reform of the laws unfavorable to honest debtors and creditors, and the enactment of laws beneficial to commerce throughout the several states."

The NACM has since taken the lead in speaking out for good laws for sound credit. It has worked to bring about wider par clearance of bank checks, greater uniformity among state commercial laws, and enactment of many state anti-fraud statutes to protect creditors.

The national association has been instrumental in securing passage of the following legislation: National Bankruptcy Act, 1898; Federal Reserve Act 1913; Federal Miller Act, 1935; Chandler Act, 1938; Bulk Sales Laws in 50 states; Fictitious Name Laws in 45 states; False Financial Statement Acts in 39 states.

**FRAUD PREVENTION** — Nearly every year, new legislation—supported by NACM members—strengthens the hand of honest creditors in striking down fraudulent debtors. The Fraud Prevention Department is a vital link between the creditor

who has reason to suspect dishonesty and the successful prosecution of credit crimes.

Since 1925, the department has been instrumental in obtaining more than 3,000 indictments and nearly 1,800 convictions. Not only does this clear the business scene of the worst offenders, but it also deters potential credit crooks.

**EDUCATION AND RESEARCH**—Chartered in 1949, the CREDIT RESEARCH FOUNDATION, INC., educational and research affiliate of The NACM, conducts a two-fold program—in education and research.

Education at the graduate level is provided annually for 420 experienced credit executives by the Graduate School of Credit and Financial Management, at summer schools at Stanford and Dartmouth. The complete program requires attendance two weeks a year for three years.

The NATIONAL INSTITUTE OF CREDIT, the NACM undergraduate educational program, serves the intermediate educational needs of credit department personnel. It operates through the cooperation of affiliated local associations and 65 colleges and universities. For those unable to attend the college classes in the 45 cities where they are offered, a full program of corres-

pondence courses is available. More than 3,000 Fellow and Associate Awards have been thus earned.

**CREDIT MANAGEMENT WORKSHOPS** are conducted several times a year, in different parts of the country, to give small groups of credit executives an opportunity to explore common problems and to exchange experiences. Some recent themes of these shirtsleeve conferences: personal development for better credit management, customer counseling, and the importance of customers as an asset in managing credit profitably.

Each conference is led by prominent credit and financial executives, consultants, and wellknown business educators.

**RESEARCH**—More than a decade of research has supplemented the varied educational programs of the Credit Research Foundation. Foundation members determine the specific research projects their funds support, but the results benefit the entire credit fraternity.

Quarterly, the Foundation polls members for their accounts receivable experience and publishes the findings. Business outlook surveys also provide a significant recurring forecast of economic trends.

Recent individual survey projects have analyzed such areas of credit operations as trends in the practice of charging interest on past due accounts, industrial equipment lease financing, training for credit management, and automation.

One of the many important accomplishments of the Foundation is the addition of "credit management" to the *Strong Vocational Interest Test*, recognition of credit management as a distinct professional vocation in personnel circles. Another is publication of the *Credit Management Handbook*, an authoritative guide on every aspect of credit management and departmental operations written by 108 practicing credit executives, management consultants, and business educators.

**CREDIT INTERCHANGE**—For NACM members, Credit Interchange Reports are available from 57 service bureaus in major business centers. NACM approval of the Interchange service operated by local associations is the member's guaranty that all possible standards of quality and integrity are observed.

The Interchange Report depends

on full cooperation among members to assemble and distribute the ledger experience of all known creditors and mutual debtors. This is the fastest and most complete service available for this vital area of appraisal data.

Operating under the present basic system since 1920, this month the network of Credit Interchange Bureaus takes another big step forward in improving service. In addition to the past methods of service—mail, telephone, and telegraph—TWX is now added. Teletypewriter Exchange Service is being simultaneously installed in a majority of service bureaus, enabling them to forward the latest ledger information to members more efficiently and faster than ever before.

**INDUSTRY CREDIT GROUPS**—Forty-three per cent of the total NACM membership now participates in industry credit groups. In regular meetings, credit executives in industries with common credit interests informally discuss their mutual problems.

Nearly 850 industry groups, representing 100 different industries, now meet regularly to exchange and discuss credit information.

**COLLECTION AND ADJUSTMENT SERVICES**—Organized in 1904, collection services are currently rendered by 66 NACM-approved bureaus in the network of affiliated local associations; 53 service units handle adjustments.

Official approval of local bureaus by the NACM assures member users of the service that high operating standards will be maintained, efficient systems employed, all personnel bonded, and all money collected fully protected.

Member-owned and supervised adjustment bureaus specialize in friendly rehabilitation of deserving businesses or early liquidation of undeserving businesses at a time when reasonable returns can be made.

**FOREIGN CREDIT INTERCHANGE BUREAU**—Established in 1919, the Bureau, located at NACM headquarters in New York, provides Interchange Reports of payment and credit information on 400,000 overseas buyers.

Its 1,100 exporter members receive Weekly Bulletins on free world market conditions and attend monthly

Round Table Conferences to exchange credit experience on overseas customers and information on payment trends by country.

Also provided: worldwide collection service, consultation, and marketing research. Eight affiliated local associations, in key export-import centers of the nation, function as chapters of the FCIB.

**CREDIT WOMEN'S GROUPS**—More than 2,500 women in the credit profession—or about one per 15 of the current NACM membership—actively participate in Credit Women's Groups. Their objective: to foster credit management as a profession for women and to encourage education in credit work.

The record of accomplishments points up the women's success in realizing these objectives. Last year, 38 groups awarded 77 scholarships, and 43 groups used part of their educational funds to send 162 delegates to regional conferences and to the Annual Credit Congress.

Many workshops and inter-group conferences are now held annually throughout the country. Each year, more women serve on local association boards of directors and committees. By recent count, 85 women were members of their local association boards, and 208 were serving on committees—40 as chairmen.

**NACM PUBLICATIONS**—CREDIT AND FINANCIAL MANAGEMENT, official magazine of the national association, reaches every member as one of the privileges of membership. Its focus is on news and trends of significance to the professional credit manager—in legislation, economic analysis, and the specific problems the credit manager must daily face and solve. It regularly presents discussions and case histories of successful methods and procedures in credit and financial management.

**CREDIT MANUAL OF COMMERCIAL LAWS**—Introduced in 1908, this annually updated digest of commercial laws affecting credit and finance now summarizes the business statutes of 50 states—and of the Federal Government—in 800 compact pages.

**CREDIT AND COLLECTION LETTERS**—*New Techniques to Make Them Work!*, written by the wellknown business letter-writing consultant, Richard H. Morris, was officially  
(Concluded on page 25)

# Badly-Written Collection Letters Blamed to Aloof Top Management, Inadequate Training

By **RICHARD H. MORRIS**  
*Correspondence Consultant*  
Ridgefield, Connecticut

**H**UNDREDS of millions of dollars will be lost this year . . . tens of thousands of good customers and prospects irritated . . . and many a company stuck with bad debts . . . all because of the unrealistic, outmoded and costly way far too many credit executives allow their daily correspondence to be handled. What do I mean by unrealistic, outmoded and costly? Simply this:

Early last fall, a credit manager of one of the country's largest and best known concerns called me in for a consultation. "Mr. Morris," he said, "we dictate around 60,000 letters a year in my department, and the volume is steadily increasing. Not only has the cost of handling our correspondence soared beyond all reason, but we are running 60 to 90 days late in following up slow-paying accounts. Also the quality and effectiveness of our letters are not what they should be. What can you do to help us?"

Unfortunately, practically the same circumstances exist to varying degrees in thousands of credit offices today . . . medium and small . . . as well as large. Before giving you the solution to these problems, let's look for a moment at another side of the picture. What effect are such conditions having on these firms' customers, and the priceless goodwill it has taken so many years to build up? Well, here is one good example.

Recently I stopped in to see the vice president of sales of a company in a highly competitive field. "Just look at these," he fairly shouted, and handed me a stack of letters from customers complaining about the dunning notices they had been getting from his concern. The first one read something like this:

*"It would appear that you purposely went out of your way to write such a discourteous letter as you did about an invoice we*

*have no record of receiving. It seems to me that your salesmen work too hard to risk losing business by the tactlessness of your credit personnel."*

I could give you literally hundreds of similar examples of how poorly conceived, ill-advised credit and collection letters have antagonized their recipients . . . created needless handicaps for the selling force . . . and offset the huge sums being spent on advertising and promotion. This is really a frightful indictment of modern management . . . particularly at a time when competition is becoming painfully acute . . . and profits are being squeezed as flat as pancakes. Why, then, are such conditions allowed to continue? From my 18 years of observation in working with over 75 prominent organizations in a wide variety of fields, I would say that they can be attributed largely to these factors:

## **I. TOP MANAGEMENT ALOOFNESS**

Because the credit department is all too often looked upon as a non-productive end of business, not enough attention and money are always given to it. I know of many cases where credit managers have sincerely wanted something concrete with which to train the members of their staffs to write better letters . . . only to be turned down as being unnecessary or too expensive.

Thousands of companies continue to send out each month the same tired and antiquated collection letters they have been using since the Year One . . . and they go to the very same accounts which have been receiving them year after year. Is it any wonder that most of such letters are ineffective . . . cause so much damage . . . and cost more than they should.

## **II. INADEQUATE TRAINING METHODS**

There is a real art to writing in a clear, concise and persuasive manner, and only about one person in 50 is

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**RICHARD H. MORRIS** is the author of "Credit and Collection Letters", a new book on effective techniques of credit letter writing, sponsored by the National Association of Credit Management.

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capable of doing it, without proper training.

I've had many credit managers say to me, "But Mr. Morris, most of my people are college graduates, and have had a great deal of training in analyzing financial statements, and corresponding with our customers." My answer generally is; "Yes, but do they know how to impart the desired information through the written word in a clear, concise and palatable manner . . . and are they able to get the action they want and build the goodwill they should in every letter they write?"

One's education normally has very little to do with the ability to turn out fine letters. Letter writing is really the art of impressing and influencing people favorably . . . just as in selling, advertising, speaking and all other forms of promotion and publicity. This means that people must be taught how to approach and handle others properly in their written messages under a wide variety of circumstances, and how to inject sales appeal into them. It is their failure to grasp these human requisites that prevents many, even with excellent educations, from writing "pay-dirt" letters.

There is another side to this problem which should not be overlooked, and I am referring to older employees. Most have a stilted way of writing which has become so ingrained from constant use over the years that it is now practically second nature. This stilted, old fashioned way of expression has become completely passé. Unless they are taught to write in a modern, appealing manner, the

public will no longer respond favorably to their letters. Right here I would like to put in an encouraging word for these valued older people. I have generally found that they are conscious of this handicap, and will often make more of an effort to improve their letter writing techniques than many younger persons.

#### **"Youngsters" Need Training**

Then, too, older credit employees are retired and replaced by youngsters . . . frequently fresh out of high and business schools. Most have probably never written a collection letter . . . or any other kind of business letter. They haven't had a chance to become well grounded in correct credit and collection practices and to learn much about human nature. So it is courting disaster . . . as well as being unfair to them . . . to turn them loose handling delicate situations with accounts that have cost thousands of dollars and years of time to put on your books. The fact that they study carbons of letters written by their predecessors before being allowed to dictate is a poor safeguard, for they tend to pick up all of the bad habits and add them to their own.

#### **Customers More Critical**

*Letter writing has changed drastically over the last 10 years, and so has the attitude of most of your customers.* No longer will they tolerate lengthy and involved writing . . . nor being treated in a tactless, impersonal manner. So don't delay in teaching your correspondents to handle your customers properly, in a modern, compelling way.

Over the past 18 years my staff and I have edited well over 5 million carbons of letters written in our clients' offices . . . about one half a million of which came from their credit departments. And this we've found invariably true: if the managers took a real interest in the quality of their departments' daily correspondence, their employees generally did too. But if they didn't, nor did those working for them.

It is up to the head of the department to set a high standard and inspiration for others to follow. If a letter going out over officers' or department heads' signatures isn't well written, it is a direct reflection on the management.



## **A world-wide organization to protect your corporate operations abroad**

One of the most challenging problems facing executives of companies establishing foreign bases of operation is proper and adequate insurance protection.

Through our own offices, or through affiliates and correspondents, in virtually all of the world's major markets, Marsh & McLennan is equipped to arrange a corporate program of insurance anywhere in the world . . . including underwriting and engineering, loss adjusting and employee benefit programming.

Representing our clients' interests we turn to their advantage an intimacy with national laws, languages, customs and currencies, an immediate familiarity with economic and political environments.

May we have the opportunity of discussing your company's plans and considering the possibilities for your advantageous use of our facilities?



## **MARSH & McLENNAN** INCORPORATED

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Atlanta Miami New Orleans Milwaukee Phoenix Cleveland Norfolk Charleston  
Oakland San Diego Montreal Toronto Vancouver Calgary Havana Caracas London

*with representation also in other parts of Central and  
South America, Europe, South Africa and Australia*

# Electronic Typing Calculator Improves Invoice Accuracy, Speeds Processing

**I**T wasn't long ago that "two of our clerks worked at near-capacity to turn out 80 invoices a day," recalls R. O. Linder, manager, United Dairy Cooperative Association, Mason City, Iowa. "Now the same two clerks produce 100 a day; could produce 50 to 75



R. O. LINDER

more, with electronic accuracy.

"This accuracy is a result of a compact electronic typing calculator, the IBM 632, which automatically makes most decisions and all computations for the operator. This leaves her only routine typing and numeric keying to perform."

## Speed Equally Important

Improved accuracy was the prime objective in installing the typing calculator, notes the dairy association executive. "But its increased speed has turned out to be an equally important advantage. Within the last year, United Dairy Cooperative Association has added 70 new members. This brings to 370 the number of plants from coast to coast and in Hawaii which are members of our purchasing group, now the world's largest for independent dairies.

"Among these members are the 100 dairies in the Quality Checkd Dairy Products Association. UDCA also serves as the Quality Checkd purchasing department."

The cooperative, founded 22 years ago in Iowa by a group of independent dairy plant operators, deals with approximately 160 manufacturers and suppliers. "Our clerks handle invoices from all of them," Mr. Linder explains. "The fact that the invoices are of all sizes, shapes and formats presented an opportunity for errors to occur under our old invoicing system.

"That system was the usual desk calculator and typewriter setup. One clerk worked from the suppliers' invoices, calculating the extensions, discounts, and so on, and wrote them



*TO PREPARE a United Dairy invoice, the operator of the IBM 632 Electronic Typing Calculator types in the heading in the usual way, using the 632's modified electric typewriter. She then keys in the quantity, with the 632's ten-key numeric keyboard, and types in the item description. The 632 automatically figures the extensions, types in the amount of the discount and the extended price and totals the completed invoice.*

down in longhand. The other clerk picked up these figures in typing our invoices. This method necessitated careful checking of the completed invoices for errors. The IBM 632 Electronic Typing Calculator performs the calculations internally, with a high degree of accuracy."

The 632, which was designed primarily for invoicing applications, consists of a modified IBM Electric Typewriter, plus a small companion keyboard like that of a normal ten-key adding machine, and an electronic calculating and "memory" unit, little larger than a two-drawer file cabinet.\* The typewriter and keyboard are on the clerk's desk; the electronic unit is out of the way against a wall nearby. The typewriter unit can be used at any time for general typewriting purposes and it is possible to punch cards directly from the typewriter keyboard.

\*The 632 is available in four models: the basic Electronic Typing Calculator; the Calculator with Card Punch; the Calculator with Printing Card Punch, and the Calculator with Paper Tape Output. Product of International Business Machines Corporation.

"This is such a simplified setup that our clerk who first used the 632 was able to operate it at top speed after just half a day training.

## How It Works

"When a supplier's invoice comes in, one of the invoicing clerks still goes over it with a desk calculator, simply because 5 to 6 per cent of these invoices have errors on them. The clerk then checks our price book, marks the unit price to be billed on the supplier's invoice, and hands it to the 632 operator beside her."

The operator inserts a blank invoice set into the 632 typewriter and types in the usual "bill to", "ship to", date, etc., just as she did in the past.

She then keys in the quantity, types in the item description, and keys in unit price and discount, if any. The 632 automatically figures the discount amount and extended price, and types them. The operator repeats this for each item on the invoice. The 632 figures each exten-

sion, and automatically types in the total when the invoice is completed.

"Thus, the finished invoice, including calculating, is prepared with no more effort than used to be required to type it. For now, calculation has been combined with the typing operation, and accuracy is much greater than when it was handled separately," says Mr. Linder.

"During invoicing, the IBM 632 stores our sales totals in its memory unit and types them automatically when we want them at the end of the day. Before, a clerk had to tally them up twice on an adding machine, to make sure they were accurate.

#### Programing the 632

"The 632 is programed by means of a punched plastic belt which slips inside the back of the modified IBM typewriter. If we wanted to put an entirely different type of operation on the 632—say, Accounts Payable—we could do so simply by inserting another program belt."

"As UDCA has expanded over the years, we have always tried to maintain an up-to-date operation in our general offices in Mason City, Iowa. When new equipment or supplies have become necessary to do a job



**SIMPLICITY of programing**—Office manager Dick Gildner looks on as operator changes the punched plastic belt which programs the IBM 632. With another belt an entirely different application can be handled, such as payroll.

more efficiently and economically, we have installed them. In view of the rapid growth of our organization, particularly in the last six or seven years, this is fortunate," notes Mr. Linder. "Equipment like the 632 has enabled us to absorb the increased volume effectively."

#### High Rate of Construction Next Decade, Says Hoadley

While "irregular growth and accelerating change" appear to be the

pattern of building construction for the decade ahead, it should at least keep pace with the predicted 35 to 50 per cent rise of the national economy, with a high rate of building the next five years moderately above the current tempo, then making a fairly sharp advance in the following half of the 10 year period, said Walter E. Hoadley, vice president and treasurer of Armstrong Cork Company, Lancaster, Pa., at a forum of the St. Louis Society of Financial Analysts.

#### THE PROBLEM:

Your Western distributors are stocked to the limits of their open account, yet need more merchandise.

#### THE OLD ANSWERS:

1. Don't ship and lose sales.
2. Tie up your company capital by doing the financing.

#### THE NEW ANSWER:

Make the shipments that mean more sales and still keep your company capital liquid.

#### HOW?

Through the progressive attitude of several Western banks and Haslett Field Warehousing. These banks are prepared to finance the growing Western distributors, using a repurchase agreement and Haslett field warehousing. Haslett has led the West over 60 years in assisting Eastern manufacturers to arrange safe distributor financing. Write today for full details of a plan to help your distributors finance themselves.



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# ON THE Personal Side

R. E. UNDERWOOD, who holds the Executive Award of the NACM Graduate School of Credit and Financial Management (Wisconsin University, 1949), has been appointed manager of credits Republic Steel Corporation, Cleveland.

He succeeds R. D. Smith, who becomes assistant treasurer.

Mr. Smith, who had been general manager of credits and collections since 1954, began with the company's Truscon division in 1926, in Chicago. He served as district credit manager there 1930-1940, when he was made assistant credit manager of Truscon in Youngstown. In 1951 he moved to Cleveland as assistant credit manager for the parent corporation.

SAMUEL A. MILLER has been appointed credit manager of Seabrook Farms Company, Seabrook, N. J. Educated at Girard College, Philadelphia, Mr. Miller was previously credit manager of Knouse Foods Cooperative, Peach Glen, Pa., after periods of private and public accounting and retail credit in York, Pa.

ROBERT J. KIRSCH has been named general credit manager, plumbing and heating division of American Radiator & Standard Sanitary Corporation, Pittsburgh. Prior to this appointment Mr. Kirsch was manager credit and collections of the corporation's Amstan Supply Division. Before going with A-S in 1954 he was with First National Bank of Boston, New York, and with Montgomery Ward. Graduate of Duke U. (B.A. in bus. admin. 1942), Mr. Kirsch attends the NACM Graduate School of Credit and Financial Management, Dartmouth.

JAMES E. TAGGART advances to the post of manager of credit and collections Amstan Supply, division of American-Standard. He began with the company in 1954 in the general credit department, became supervisor of collections in 1955, and most recently had been zone credit manager,

central region. Mr. Taggart holds the Fellow Award, National Institute of Credit.

He is a graduate of University of Pittsburgh (B.A. 1951) and also attended Duquesne University school of law.

ARTHUR J. GARVIN has been named to the newly created position of credit manager Waltham Watch Company, Chicago. A former board member of the Chicago-Midwest Credit Management Association, Mr. Garvin was credit manager of Visking Company for ten years.

D. S. BROADBRIDGE, formerly staff secretary Oregon Association of Credit Management, has been named controller Cole, Clark & Cunningham, at the company's Portland (Ore.) headquarters, with supervision of office management, methods, procedures and credit analysis.

JOSEPH H. HADFIELD, who formerly headed the accounts receivable financing department Bank of America NT&SA, Los Angeles, has become general manager Atlas Factors, Inc., that city.

VICTOR K. RIGGS formerly manager of the credit department, has been appointed assistant controller Clinton Corn Processing Company, a division of Standard Brands Inc., Clinton, Iowa. He succeeds Arthur J. Munson, Sr., retired. At the same time the promotion of MEL G. FELLER from assistant manager to manager of the credit department was announced.

HILSMAN V. WILSON has been named secretary McCormick & Company, Inc., Baltimore, Md., to succeed James F. Welsh, who resigned as corporate secretary to become general manager of the McCormick Division of McCormick & Co., Inc. Mr. Wilson, a member of the American Bar Association, began with the com-



R. E. UNDERWOOD



R. D. SMITH



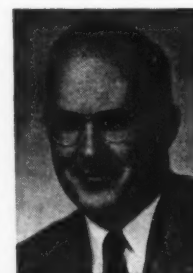
R. J. KIRSCH



J. E. TAGGART



A. J. GARVIN



D. S. BROADBRIDGE

pany in 1955 in the office of the secretary. He has been assistant secretary since 1957. Mr. Wilson also is secretary and director of the McCormick Division and secretary of the McCormick Overseas Trading Co. Division.

In promotions at Whirlpool Corporation, St. Joseph, Mich., MASON SMITH, formerly vice president and treasurer, has become financial vice president, and WALTER A. HOLT, assistant treasurer, steps up to the treasurer post. Mr. Smith also is chairman of the company's financial subsidiary Appliance Buyers Credit Corp., of which Mr. Holt is a director. The latter also is a director Whirlpool International of Canada and secretary-treasurer Whirlpool International Bahamas, S.A.

HAROLD V. MENDELSON has become vice president Equitable Leasing Corporation, New York City. He holds the Executive Award NACM Graduate School of Credit and Financial Management, Dartmouth (1960).

## KNOW YOUR NATIONAL

(Concluded from page 19)

sponsored by the NACM in 1960. It is illustrated with 150 company-tested letters that can handle 75 per cent of the typical credit department's credit and collection letters—and additionally 55 examples of letters to solve special situations.

**MONTHLY BUSINESS LETTER**—Published on the 15th of each month, this letter of economic and business news provides members and the nation's press with the credit manager's viewpoint on economic trends and business and legislative developments that have special impact on credit.

**STANDARDIZED FORMS**—For members' convenience, the NACM publishes approved forms for trade acceptance, credit application, account review, financial and income statements.

**NATIONAL COMMITTEES**—In addition to the 32-man NACM Board of Directors and the Secretarial Council—an elected group of local association secretary managers who act as liaison between the NACM and local association management—23 national committees supervise the varied activities of the NACM.

Several, in effect, create supplementary services and benefits for members, other than those previously described. They are:

**NATIONAL IMPROVED CONSTRUCTION PRACTICES COMMITTEE**—has spearheaded an industry-wide movement for the reduction of retainages on construction contracts in addition to improved credit practices, generally, in the construction industry.

This committee has estimated that over \$5 billions annually is withheld by owners from payments to contractors, subcontractors, and suppliers during the period that work is in progress. Retained amounts vary widely, sometimes reaching as much as 20 per cent of the total contract price—and such amounts are often withheld for as long as two or three years after completion of the specific job for which payment is due.

Recently, the committee sponsored the formation of the National Construction and Building Materials Manufacturers Credit Group, organized to give nationwide credit information coverage in the construction field, including Interchange Re-

ports, bonding information, liens, and reports on new laws.

**NATIONAL INSURANCE ADVISORY COUNCIL**—was organized to promote a greater awareness among credit executives of the need for periodic review and appraisal of customer risks and protection against them.

The Council sends to local associations special bulletins or pamphlets on insurance subjects of particular interest to credit managers. It also sponsors local programs devoted to the development of better understanding among credit managers of customer coverage as a factor in credit analysis. With the Annual Insurance Award at the Credit Congresses, it recognizes the local association that has made the most outstanding contribution to insurance education in the year.

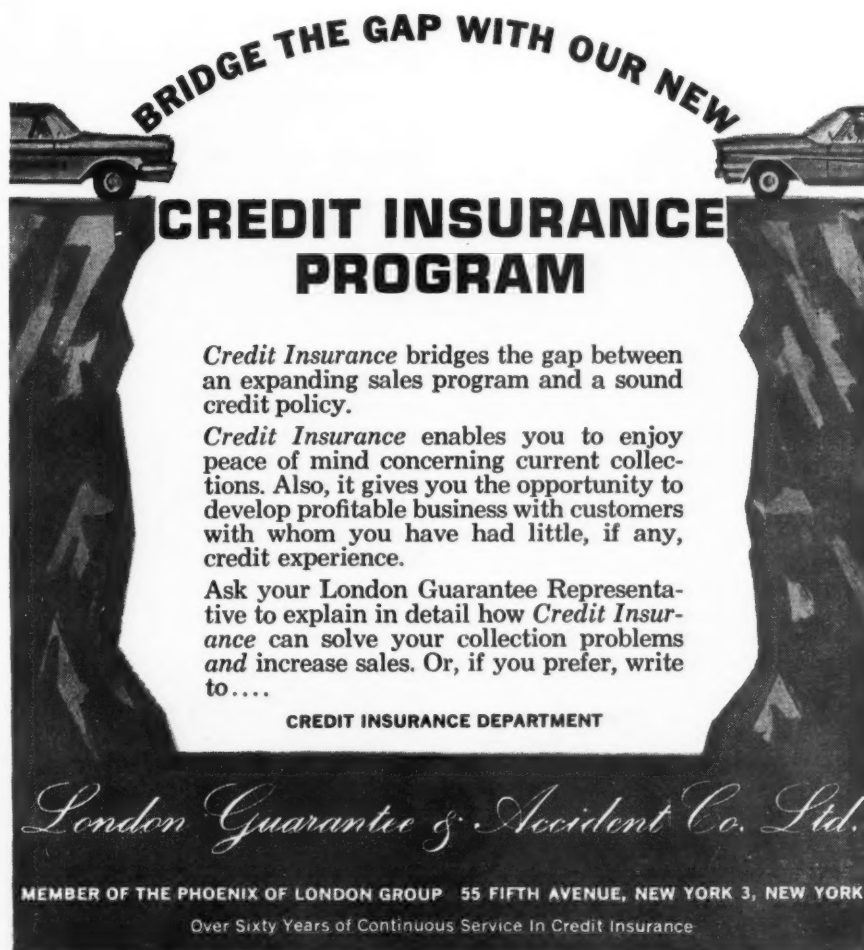
The Council also makes available, on local request, competent speakers on insurance subjects.

**NATIONAL COMMITTEE ON CO-OPERATION WITH ROBERT MORRIS ASSOCIATES**—conducts a program of

education and promotion of sound banker-mercantile credit relations in the exchange of credit information. This committee and the Robert Morris Committee on Cooperation with Mercantile Credit Men jointly developed the "Statement of Principles in the Exchange of Credit Information between Banks and Mercantile Concerns," widely distributed at the National Credit Congress and among Industry Credit Groups. The committee urges credit managers to apply these principles in their day-to-day operations.

THESE are not all—or the only—services the National Association of Credit Management offers you. Many important functions are more informally conducted by the NACM and the 124 affiliated local associations—personal advisory services, for example, and help in job placement.

Know and use your NACM services for what they are worth—and your membership will be worth infinitely more to you and to your company.



**BRIDGE THE GAP WITH OUR NEW**

## CREDIT INSURANCE PROGRAM

*Credit Insurance bridges the gap between an expanding sales program and a sound credit policy.*

*Credit Insurance enables you to enjoy peace of mind concerning current collections. Also, it gives you the opportunity to develop profitable business with customers with whom you have had little, if any, credit experience.*

Ask your London Guarantee Representative to explain in detail how *Credit Insurance* can solve your collection problems and increase sales. Or, if you prefer, write to....

**CREDIT INSURANCE DEPARTMENT**

*London Guarantee & Accident Co. Ltd.*

**MEMBER OF THE PHOENIX OF LONDON GROUP 55 FIFTH AVENUE, NEW YORK 3, NEW YORK**

Over Sixty Years of Continuous Service In Credit Insurance

# Modernizing the Office

*New Equipment to Speed Production and Reduce Costs*

## Open-Shelf Power File ➡

757 Newest advance in mass record keeping equipment, Open Shelf Power File introduced by DIEBOLD INC. places any record at operator's fingertips at touch of button. Speed of filing, spacesaving and safety advantages appeal to management. File personnel will welcome absence of ladders, elimination of need to stoop or strain to file or retrieve records. Shelves rotate in upright position with 3-sec. cycle between successive shelves. Power files are available in letter or legal size shelf-depths, in 16, 14 and 12-shelf models, or custombuilt, with choice of work counters and colors (16-shelf unit shown has file capacity equal to six four-drawer file cabinets).



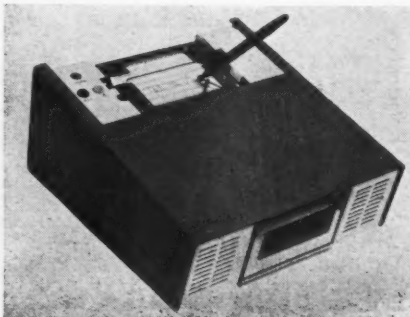
## Printing Multiplier



758 Shortcut multiplication on BURROUGHS CORPORATION's new J314 Printing Multiplier provides economical method for handling repetitive figuring tasks. To multiply, operator enters a factor on keyboard, a second factor on multiplier wheel, and depresses multiplier key. Printed record provides audit of multiplication. Interlock devices prevent misoperation of listing and control keys that perform addition, subtraction, error corrections, non-adding, sub-totaling and totaling. No training is required to operate.

## Written Data by Phone ↓

759 With Model D TELEScriber of TELautograph Corporation, operator writes directly on continuous, automatically fed forms, and transmitted messages are reproduced instantaneously, in radius of up to 50 miles, on one or more Telescribers, as determined by user. Among uses: transmission of orders, truck and manpower dispatching, manufacturing and inventory control, tool requisitioning. Unit can be placed at central telephone switchboard. Three carbon copies may be created on transmitting unit. Equipment can be supplied in case which may be countersunk in work station. Equipment can be leased.



## Safety-Model Burster

760 Improved appearance, new safety features are advances incorporated in Model 617-2B Burster of UARCO INC. Maker points out: plastic guard over high-efficiency trimming unit will automatically stop machine if raised during operation; recessed "on" switch prevents accidental starting; raised "off" button permits machine to be stopped quickly and easily. Operational noise has been reduced to minimum, maker says. Side panels that extend to floor streamline appearance of machine.



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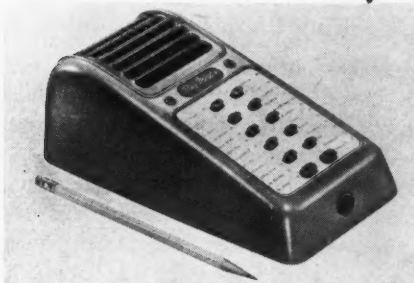
*This Department will welcome opportunities to serve you by contacting manufacturers or wholesalers for further information regarding products described herein. Please address MODERNIZING, Credit & Financial Management, 44 East 23rd St., New York 10, N. Y.*

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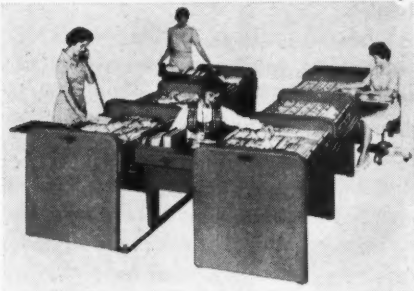
## Electronic Intercom

761 RING-MASTER Electronic Intercom Telephone system can be used hands-free (telephone receiver is optional), with expandability from 2 to 2,000 stations, according to maker International Magnefonics Corporation. Index directory on face of unit,

executive priority, numerical buttons for touch dialing are among features. Communication between buildings is said to be possible. Remote control dictation, background music, automatic control of lights and doors are other advantages of system. Each desk station is said to be smaller than conventional dial telephone. ↓



### Cycle Billing Equipment ↓



762 ROL-DEX Cycle Billing record-handling System of Watson Manufacturing Company Rol-Dex Div. evolves around central work station which houses the customer account file. Open trays house the account records in Rol-Dex units arranged on two sides of chair-desk assembly that rolls length of station, providing complete command of station for unit operator equipped with head-set telephone. Other personnel can refer to records without disturbing unit operator by means of unique two-sided printed indexing system. Strategically placed telephones add to speed, efficiency.

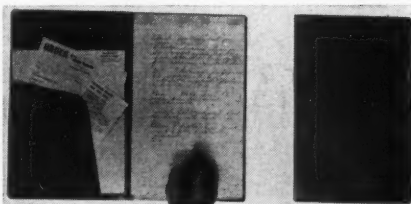
### Desk Memo Kit →

763 Legal-sized Desk Memo Kit of COBB SHINN SERVICES folds up for convenient note-taking away from the office, while traveling or during conferences. Rigid backing makes kit self-supporting for writing. Covered in saddle brown vinyl, kit opens out on desktop to 18" wide x 14½". Right side holds standard legal pad, left pocket is for loose notes, correspondence. When folded to 9x14", kit fits into briefcase. Kit may be gold stamped with name or trademark. Special quantity prices.



### Data Transmitted Faster via Toll Telephone Lines

764 DIAL-O-VERTER System of Digitronics Corporation makes possible high-speed transmission of punched card, paper tape or magnetic tape data over regular toll telephone lines, day or night, on attended or unattended basis. Using Dial-o-Verter, as many as 27,000 alphanumeric characters can be sent during 3-min. phone call, maker says. System is equally applicable for use over private telephone lines. Variety of terminal equipment is available. All terminals use a common language for communication. Detailed brochure.



WILLIAM S. VAUGHN, president of Eastman Kodak Company, Rochester, has been awarded the gold medal of achievement by the Poor Richard Club of Philadelphia, advertising organization.

LLOYD M. POWELL, president and chief executive officer of Dictaphone Corporation, is the new president of Office Equipment Manufacturers Institute.

### Laminates Automatically ←

765 HARCO INDUSTRIES Laminating Press will laminate in plastic any type of document to 11"x14" in size and/or 1200 wallet size cards in an hour, maker notes, providing protection and adding attractiveness to papers. Completely automatic, device feeds itself, picking up the "sandwich" and placing it in laminating compartment. In addition to plastic lamination, unit is being applied to a wide range of commercial applications, in manufacture of printed circuit boards and self-adhering nameplates.



### BOOK STAND—For D & B Reference Book

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## Legal Rulings and Opinions

### SBA Priority in Bankruptcy Ruled by U.S. Supreme Court

The Small Business Administration is entitled to priority for debts due the United States in the unpaid balance of a bankrupt debtor, even though SBA agreed to share these funds with a private bank which had joined in making the loan.

Thus ruled the U.S. Supreme Court, in a decision written by Justice Hugo Black, declaring that SBA is the United States for the purpose of bankruptcy priority and not a separate entity.

The SBA had contracted to pay the participating private bank one-fourth of any money it later collected on the loan, but that fact did not mean the Government must lose its priority, the Court held in reversing a decision of the U.S. Court of Appeals, Tenth Circuit (*SBA v. McClellan*, No. 6117, 1959).

### Depreciation of Intangibles

Northern Natural Gas Company's rights of way over certain land were to last as long as it maintained its pipe lines. It claimed depreciation on the costs of the rights of way. Internal Revenue Service denied the claim, on the premise the life of the easements could not be estimated.

The Eighth Circuit Court overruled IRS, held the easement depreciable. The reasoning: Natural gas is being exhausted with use, like tangible assets, whereas the pipe line is designed to serve presently known reserves, and expected useful life of the pipe line and the easements can be computed. (*Northern Natural Gas Co.*, 5 AFTR 2d 1246, reviewing *F. Suppl.* 176, 3 AFTR 2d 1254).

### Tax Avoidance Boomerang

When the owner of a realty business created new corporations to hold new land for development, but basically to obtain added tax benefits, extra surtax exemption was denied, in Eighth Circuit Court, under Section 269, 1RB Rev. Rul.

A real estate developer had two corporations: one built the homes, the other sold them. Then he decided

on additional corporations to contract with the building and selling corporations. And each new entity would have a bit less than \$25,000 annual profit.

The court held there was no business purpose for the new entity. (*James Realty*, 6 AFTR 2d 5178, affirming 176 F. Supp. 306, 4 AFTR 2d 5420).

### Indirect Damage Not Deductible

Loss in value of one's property resulting from surrounding damage, but not direct, does not entitle the owner to a casualty loss deduction (*Orr*, TC Memo 1960-147).

A club, to which one Mrs. Orr belonged, owned an artificial lake, formed by a dam, and the surrounding land. Mrs. Orr had leased one of the lots and her family had built a cottage on it. She was entitled to use of the lake.

A hurricane struck the dam, did considerable damage to its water level, but missed the Orr cottage.

The Tax Court held there was no direct damage and so only the club was entitled to tax deduction.

### Would Open Post Exchange and Ship Stores' Activities to Suits

Passage of legislation "to remove the sovereign immunity which shields non-appropriated fund activities, so that they might be sued in courts of law to the same extent as any other instrumentality" of the federal government, is asked in a resolution adopted at the annual convention of the Commercial Law League of America at French Lick, Ind.

Included in such activities is operation of military post exchanges and ship stores which, the resolution stated, have annual gross sales exceeding \$1.2 billions.

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*Every time you turn green with envy, you're ripe for trouble.*

—Lansing State Journal

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*If you have built castles in the air, your work need not be lost; there is where they should be. Now put foundations under them.*

—Thoreau

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### Working Capital Distribution

Distributions of working capital "reasonably attributable to the business activity terminated" qualify as capital gains (*Rev. Rul. 60-232, IRB 1960-27*). This IRS ruling modifies an earlier holding that only the proceeds from sales of the business assets should have this favored tax treatment in a corporate contraction (*Rev. Rul. 55-373, CB 1955-1, p. 363*).

A corporation, in the business of repairing equipment for contractors, also bought and sold such equipment and had an inventory of such equipment which it leased out. It sold its rental equipment, repair business and miscellaneous inventory to a buyer. After the sale, the corporation's business consisted only of renting its building, shop machinery and office equipment to the buyer. Under a plan of partial liquidation it distributed the proceeds from the sale of the business to its shareholders. Additionally it distributed that part of its working capital (cash, accounts receivable, and so on) attributable to the discontinued business.

### Civic Tax Litigation Speeded

Despite increasing volume of civil tax cases, litigation in federal courts is on a more current basis than at any previous time in the last 10 years, Charles K. Rice, assistant attorney general, reported to Attorney General William P. Rogers. Less than 10 per cent of all pending civil tax cases is more than two years old, he said.

The average such case is being concluded in 15 months, about half the period required eight years ago, according to Mr. Rice. Among reasons cited for the improvement are: elimination of delays in filing Government answers, increased use of pre-trial and discovery proceedings, the bunching of cases in tax dockets, and closer relations with the Internal Revenue Service.

# Guides to Improve Executive Operation

## KEEPING INFORMED

### RESEARCH IN FEDERAL TAXATION—

64-page booklet tells how to obtain Federal tax information quickly, readily in P-H source tax library, consisting of Internal Revenue Code and Regulations; American Federal Tax Reports; Tax Court Decisions; Tax Court Memorandum Decisions, and Internal Revenue Bulletin Service. Typical sections from these publications are shown. For booklet, write Prentice-Hall, Inc., Englewood Cliffs, N.J.

### HOW TO SAVE 3½% OF PROFITS—

Booklet estimates \$1½ billion annual loss through fraud and embezzlement, equal to 3½% of corporate profits. Disbursements account for 72% of fraud losses, inventory and other assets account for 15%, booklet notes, and outlines methods of prevention. For copy, write Cummins-Chicago Corp., 4740 N. Ravenswood Ave., Chicago 40, Ill.

### EQUIPMENT LEASING FACTS; A Single Machine or a Complete Plant

—Booklet seeks to provide a comprehensive picture of benefits, procedures and cost involved in acquiring or selling machinery and equipment on rental basis. Specific plans are described and typical fees noted. Free on request from Armstrong Leasing Corp., 60 East 42nd St., New York 17, N.Y.

**SMALL BUSINESS ADMINISTRATION** abstracts of research and development reports covering principal industrial categories. New SBA service is designed to make it easier for small manufacturing concerns to obtain current information on Government-supported technical research and development work. For details of the service, contact nearest field office of the SBA.

*Informative reports, pamphlets, circulars, etc., which may be of interest to you. Please write directly to the publisher for them. CREDIT AND FINANCIAL MANAGEMENT does not have copies available.*

*To expedite receiving booklets described below in this column, address all inquiries concerning Efficiency Tips to CREDIT AND FINANCIAL MANAGEMENT, 44 East 23rd St., New York 10, N. Y.*

## EFFICIENCY TIPS

892—Kit of 35 actual samples of materials run on Model 320 table-top Offset Duplicator of A. B. Dick Co. is available without charge. Write us.

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894—"Single System" Royaltypewriter automatic typing machine that cuts master tape and complete documents on single unit, is subject of literature of Royal McBee Corp.

895—"RCA 501 Electronic Data Processing System," comprehensive booklet describes in nontechnical language the construction and techniques possible with computer system of Radio Corp. of America.

896—"Do You Talk Computereze?" illustrated glossary of computer terms which are becoming part of the language, is Minneapolis-Honeywell Regulator Co.'s contribution to computer understanding. Free.

897—"Modern Filing for Lawyers" illustrated 16-page booklet of Tab Products Co. contains general filing facts as well as answers to legal filing problems.

898—"The Right Way to Office Planning," illustrated brochure of Royal Metal Manufacturing Co., explains how space engineering efficiency is achieved with modular furniture and free-standing partitions.

899—Fold-A-Matic construction design of completely new Remington Rand standard typewriter, which opens like a book at point-of-use, is described in folder R 9043.

## BOOK REVIEWS

**THE PRINCIPLES OF AUDIT SURVEILLANCE**—By Harvey Caldwell, practicing CPA. 472 pages. \$9.00. D. Van Nostrand Company, Inc., 120 Alexander St., Princeton, N.J.

● This comprehensive study of internal embezzlement, while addressed to accountants and students, is important reading for auditors, controllers, treasurers and in fact for all areas of business management. Here is a fresh approach to basic principles and theory for protection against the inside thief.

After a discussion of the social problems involved, the author applies case histories to development of theoretical concepts regarding the many varieties of fraud under the three general categories of inside embezzlement—*theft acts, concealment manipulations, and conversions*—with attentions to the qualities and sources of fraudulent credits.

In Part III, he takes up audit surveillance in practice, as a new specialized function of public accountants and internal auditors. He emphasizes the need of new sources of corroborative data, use of honest employees in the search for evidence. Finally he proposes techniques for a surveillance program, applied irregularly and in varying patterns, but with planned consistency.

### Also Recommended

**ELECTRONIC BUSINESS MACHINES**, based on two courses of lectures at Dundee Technical College, in Scotland, and edited by J. H. Leveson, presents essentials of application of electronic computers to commercial and industrial operations and goes on to discuss developments in business data processing. In a field so fluid, the study values of the volume are primarily in definition of basic features of computers and programming. 272 pages. \$15.00. Philosophical Library, Inc., 15 East 40th St., New York 16, N.Y.

*Books received or mentioned in this column are not available from CREDIT AND FINANCIAL MANAGEMENT unless so indicated. Please order from your bookstore or direct from the publisher.*

previously been the subject of legislation, uniform or otherwise.

*Article 6 relates to bulk transfers. There has not previously been any uniform legislation on this subject.*

Article 7 covers warehouse receipts, bills of lading and other documents of title. It takes the place of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, and brings them into harmony with other provisions of the Code.

Article 8 relates to investment securities. It takes the place of the Uniform Stock Transfer Act and simplifies and clarifies provisions for registration of transfers of stocks and bonds.

*Article 9 relates to secured transactions, in which tangible and intangible personal property is encumbered to secure an indebtedness. It also relates to sales of accounts receivable, contract rights and chattel paper. It supersedes, among other statutes, the Uniform Trust Receipts Act.*

Article 10 prescribes an effective date and repeals earlier laws in conflict with the Code.

#### ***New Fields of Uniform Legislation***

Many fields of commercial law included in the Uniform Commercial Code have not previously been the subject of uniform legislation. There is no uniformity in the Factor's Lien Acts, no uniformity in the statutes controlling assignments of accounts receivable. There is no uniform law of Bank Collections, no uniform legislation affecting letters of credit or controlling bulk sales. If we engage in business with customers outside the state, we are also interested in the laws of other states.

Our uniform laws are not uniform. This is partly because, in various states, changes have been made so they would more adequately serve the needs of a changing business world. Partly, it is because states' courts have placed different constructions upon identical statutory provisions. This is why the authors of the Uniform Commercial Code have added extensive comments. They hope to achieve both greater uniformity in legislation and greater uniformity in judicial construction. In the six states in which the Code has been enacted, the law is, in fact, uniform. Pennsylvania has adopted amendments to bring its law into harmony with the Code as enacted elsewhere.

Preparation of the Uniform Commercial Code originally was undertaken in 1940. Progress was slow and painstaking. Existing law, both statutory and judicial, was examined with care, preserved when deemed adequate for modern needs, supplemented or corrected when such need was recognized, and subjected to extensive and intensive review and criticism.

Every Section of the Code was prepared, considered, reconsidered, revised and re-revised by its draftsmen, by committees of advisors to the draftsmen, by the Council of the Institute, by sections of the Conference, by the full membership of both organizations, by other expert lawyers, by businessmen, bankers, shippers, manufacturers, wholesalers, retailers and other laymen. Twelve years after the project was undertaken, the last i was dotted and the last t was crossed. The editorial board marked the 1952 draft "Final."

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#### ***States in Which Studies of Code Have Been Inaugurated***

Arizona	Minnesota
Delaware	Mississippi
District of Columbia	Nebraska
Idaho	New York
Iowa	Tennessee
Michigan	Vermont

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It was the hope of the Conference and the Institute that the Code would promptly be enacted by the legislatures of a few of the large states and then spread like wild-fire to the others. When the Pennsylvania legislature convened in 1953, the Code was promptly enacted by unanimous vote and became effective in 1954.

#### ***The New York Situation***

In New York, the proposed legislation was referred to the New York Law Revision Commission, which made a report indorsing the idea but recommending a large number of changes. Other states waited.

The Editorial Board was reactivated and subcommittees were appointed to consider these suggestions. Most were approved and incorporated in a revised draft. The New York Committee was not satisfied with these changes, however, and it has not recommended enactment of the Code by the New York Legislature in its present form. Enactment elsewhere is gaining momentum. I think it is highly probable that within another six to ten years the Code will have been enacted in every state.

In the meantime, the states in which the Code is in effect have expressed complete satisfaction and find that they have suffered no disadvantage in interstate transactions.

*It has been suggested that a small commercial state cannot afford to enact the Code before its larger neighboring commercial states have done so. To that suggestion, the experience of Pennsylvania provides a most convincing answer.*

Pennsylvania, of course, cannot compare commercially with its next-door neighbor, New York; and the volume of transactions between the two states is tremendous. Pennsylvania nevertheless enacted the Code while New York has continued to operate under the old law. In more than 51½ years of Code experience, we have not heard of one instance in which a Pennsylvania concern was disadvantaged because that state operates under the Code while New York does not. Adoption of the Code has given Pennsylvania vastly improved statutes regulating commercial transactions. Any other state, regardless of its size, can do the same.

The Uniform Commercial Code was enacted in Massachusetts in 1957, effective in 1958. In 1959, responding to an inquiry from the Connecticut Chamber of Commerce, William J. Bird, executive vice president of the Greater Boston Chamber of Commerce, replied: "It (the Code) has exceeded our expectations. To date we have heard nothing but commendation and not one word of complaint or criticism."

The Code was enacted in Kentucky in 1958 by a unanimous vote, became effective July 1, 1960. The

*(Concluded on page 41)*

security interest may be given with minimum publicity. The actual amount loaned and the terms of repayment need not be a matter of record. The lien will apply not only to the property or assets in existence at the time of the secured transaction but will apply to property acquired afterwards, and even to proceeds when the merchant or manufacturer sells the property.

*This means, in effect, that if we as unsecured suppliers were to sell merchandise to an account who had given his inventory as security, our merchandise would be subject to a lien the moment the sale was made, and we would have no recourse. Our merchandise is part of the floating lien—we cannot attach the inventory or the bank account, and only a court can determine the debtor's equity, if any, in the business.*

By making all personal property available as security, Article 9 represents a fundamental change in commercial law. This article is not a necessary part of the other Articles of the Code which had as their main purpose uniformity. The question I am raising is whether or not the adoption of the general theory behind this Article is for the best interests of our business economy. Selling merchandise immediately subject to a lien is like a mouse taking a piece of cheese from a trap. It can be done, but is it a very sensible way to use your head?

#### *What Proponents Say*

Those who favor this Article tell us that modern business demands generous amounts of working capital often in excess of what can be supplied out of the investments in the company. While lenders of credit may be willing to accept certain risks as to a borrower's integrity, they naturally want security in the event the business fails or is unable to pay in the required manner. Article 9 seems to create a situation where the business has behind it a "financier" who advances the money necessary to conduct the business, and holds as security all of the assets of the business. We are told suppliers should be pleased with this situation because instead of having 30, 60 or 90 days for payment they can be paid immediately out of the advances made by the "financier". I doubt this would work out in practice.

Moreover, I am sure we all have some valued customers who have become excellent accounts over a period of years. At some time in their past, when they needed help they were not in a financial position to borrow on a secured basis on the strength of their assets. Even taking into consideration inventory, works in progress, accounts receivable and proceeds, a financial institution would not have been justified in advancing the capital necessary to operate, let alone expand at the time you started working with them. A financier determines investment on a percentage of assets available: An unsecured creditor determines the extent of credit to be granted not only on the basis of character, capacity, capital and conditions, but also taking into consideration his own knowledge and ability to counsel on the technical nature, use and marketing of his products. *I maintain the supplier who sells on an unsecured basis fulfills an important need in the economic structure of society.*

Let me describe the steps to be taken in order to create what has been called a "floating lien" upon all of the

### States Which Have Enacted Code (Listed in order of enactment)

	Date Code Became or Becomes Effective
Pennsylvania .....	1954
Massachusetts .....	1958
Kentucky .....	1960
Connecticut .....	10/1/61
New Hampshire .....	7/1/61
Rhode Island .....	1/2/62

assets of the business, and some of the results of such steps:

The secured creditor files a financing statement with the office of the Secretary of State. It may be filed before any advance of any kind is made by a secured creditor and before his commitment to make any advance. Section 9-402 states the minimum requirements for such a financing statement.

#### *The Information Necessary*

The only information necessary is the name of the debtor and his address, the name of the secured party and his address, and a statement indicating the types, or describing the items of collateral covered by the statement. Nothing more is required. There is no information regarding the amount of indebtedness, the due date, the amount of future advances to be made or the terms of repayment. In fact, we are told it is in the general business interest that such matters should not be made a matter of record.

The Code makes it clear that description of property may be in the most general terms. As to the equipment and stock in trade of a merchant, the following is sufficient:

"All trade fixtures, furniture, furnishings, machinery, equipment and personal property of every kind, and all stock of goods, wares and merchandise and supplies, whether now owned by borrower, or hereafter acquired, and all proceeds of the collateral are also covered."

*The same general description may be used to apply to a manufacturer to cover all of his equipment, raw products, work in progress, finished products and proceeds of sale of the finished products.*

Now, let us suppose you've checked the records in the office of the secretary of state and find that a financing statement has been filed. You are given no record of the amount of the security agreement. You may, of course, ask the customer for the information so you may decide what you will do about an obligation he already owes you or determine whether you will grant credit in the future. You may ask the secured creditor, you may or may not receive satisfactory information.

#### *Section 9-208 Analyzed*

The Code has one provision in it (Section 9-208) which is supposed to furnish the means for the credit manager to receive authenticated information. This Section provides that a debtor may sign a statement indicating what he believes to be the amount of unpaid indebtedness, ask the secured creditor for approval or

correction of the statement, and the secured creditor must comply with such a request within two weeks or be responsible for any loss caused the debtor. A debtor may request approval or correction of such a statement once each six months without charge. For any additional statement, the secured party may require payment of a charge not exceeding \$10.

We are told by following this procedure we can obtain an authenticated statement of the amount of indebtedness at any time. However, this can only be obtained by the cooperation of the debtor. In the meantime, you may be holding orders for a decision. Furthermore, the secured creditor may make further advances the next day and he is secured for all such further advances by the filing of the former financing statement.

Now, having obtained as much information as you're able, you have three choices:

1. You may refuse to extend credit to a customer who creates a "floating lien" on his business assets and sell him on a COD basis.

2. You may seek a subordination agreement from the "financier" who will agree that your account will be paid before the secured "financier" may realize upon his security.

3. In some cases it may be possible for you yourself to sell upon secured credit. These cases would be possible where you are dealing in merchandise that can now be delivered under trust receipts, or consignment agreements, as in the case, for instance, with electrical appliances, television sets and other items readily identifiable in the customer's place of business.

The only way to establish a priority over the "floating lien" is for you to file a financing statement 10 days before delivery of the merchandise, and also before such delivery give notice of what is called your purchase money financing to the holder of any security interest who has filed a financing statement, or is otherwise known to you (Section 9-312 (3) (4) ).

#### ***Selling on Secured Credit***

The possibility of selling on secured credit is not open to most of us who deal in merchandise, supplies and services that are mingled with the general inventory and not identifiable, or not consumed.

As I said before, if the financing statement specifies that proceeds of the collateral are covered (Section 9-306 (2) ), the Code furnishes further protection for the "financier" (Section 9-306 (4) ). In cases where the secured agreement covers the entire inventory, all proceeds of sale would be identifiable. If these proceeds were deposited in the business bank account, the entire bank account would be identifiable as proceeds of sale, and subject to the secured claim.

In fact, the Code even provides that in case of bankruptcy the secured creditor shall have a lien upon the bank account of the debtor in which proceeds of sale of collateral have been mingled with other monies, with the proviso that such lien shall not be greater than the amount of cash proceeds received by the debtor within 10 days before bankruptcy, and deposited in the bank account before the bankruptcy, less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10 day period. I understand this provision is already being argued and questioned by lawyers as

being in conflict with the Bankruptcy Act and therefore void—yet it is included in this Article.

Nothing appears to have been overlooked in protecting the "financier" to the greatest possible extent. Is the approval of this theory for the best interests of the business community? Is there no place, no need for the wholesaler who sells on unsecured credit? The "financier" may be a bank or responsible financing company, in which case we should expect to be able to work in cooperation with the secured creditor. But Article 9 makes this method of financing available to irresponsible financing institutions, individuals, friends or relatives. The situation may easily be brought about where the liabilities are all those of the customer and the assets are all those, in effect, of the secured party (Section 9-205), (Section 9-207).

*Uniformity.* I am for uniformity, but why does it have to be the uniformity of the turtle and its shell? Why not uniformity for the protection of the unsecured creditor or the debtor? Since the purpose of Article 9 was to establish the "floating lien", it doesn't seem likely to me that the first party to establish a security interest would omit the "floating lien" possibility since this single lien would cover all of the so-called quick assets that are more readily converted into cash.

Article 9 would create a situation where "financiers" or financial institutions, major suppliers, fixture and equipment suppliers and those who sell identifiable merchandise would all be scrambling to file and perfect priority security interests while the unsecured creditor would be required to sell his merchandise subject to a lien at the moment of sale.

It is true that through the years those dealing in secured transactions have developed devices to make assets available, e.g. Trust Receipts Act, Factor's Lien, but these we are told are difficult and expensive.

#### ***The Trust Receipts Act***

The Trust Receipts Act is limited to large similar units, readily identifiable as individual items. Because this Act is desirable for automobile, electrical and appliance financing, it doesn't follow that it would be good for those who sell unidentifiable merchandise. Just because you give a bucket of oats to a horse, a large four-legged vertebrate, does it mean the same is good for a dog, a small four-legged vertebrate? Believe me, under Article 9 the unsecured creditor would be not only under-dog, he would be plowed under!

*If we, as unsecured creditors, find ourselves in a situation where a "floating lien" exists and our account is unpaid, how are we going to get out? When everything else has failed, what can be done through legal action? If there is a valid "floating lien", we cannot take our merchandise back (Section 9-306 (5) ), we shall no longer be able to levy an attachment or execution upon the inventory of the debtor, nor will we be able to garnish the business bank account (Section 9-306 (2) ).*

We are told that the interest of the debtor over and above the amount of his secured indebtedness, or in other words his equity, is subject to attachment or levy, but I am told by lawyers that we have no effective procedure in our law for realizing upon such an interest apart from bankruptcy proceedings. In Section 9-311 the Code states it is not possible for a term or provision in a security agreement to prohibit a debtor from transferring whatever interest or equity he has to a third

party. However, the security interest may still set forth in the agreement a prohibition against such a transfer. If an unauthorized transfer is made it will constitute a default and the secured party will then be entitled to proceed with repossession and foreclosure. The security interest need only sell the collateral in a commercially reasonable manner, whatever that is.

Actually this means that the problem of the determination of the debtor's equity will have to be settled in the courts. In any event, such proceedings, by attachment, would necessarily entail satisfying the secured creditor's lien by payment (Section 9-505 (2) ).

Let's look again at the theory of this Article as far as unsecured creditors are concerned.

1. Our merchandise is sold subject to a lien.
2. We cannot take our merchandise back since it has become part of the security interest.
3. We cannot attach the inventory of the customer.
4. We cannot garnish the bank account.
5. We have to go to court to determine the customer's equity, if any, and in any event, if we attach we have to pay off the security interest in full.

Article 9 would virtually eliminate the extension of credit on an unsecured basis, since those of us who deal primarily in merchandise that cannot be specifically identified would have only the following choices:

1. Sell on open account with merchandise subject to a lien—a situation untenable by any intelligent consideration.
2. Sell on COD terms.
3. Obtain a written subordination agreement.
4. File a purchase money security interest, notifying the security interest 10 days prior to delivery of merchandise, if our merchandise is identifiable.

### Make Capital Work Harder, Finance Conference Is Told

Making capital work harder is "the one avenue of real promise" to take care of the steadily rising operating costs of sales finance companies, delegates to the 27th annual convention of the American Finance Conference, in Chicago, were told by A. J. Blasco, president of Interstate Securities Company, Kansas City, Mo.

Mr. Blasco, as moderator of a panel discussion on maintaining profits in the future, said, "We must have the courage to decline business which is not productive of satisfactory yields and low losses."

Robert R. Snodgrass, president-elect of the Conference, and president of Atlas Finance Company, Atlanta, at a press conference indorsed a bill which Representative Emanuel Celler (Dem., N.Y.) said he would reintroduce in the new Congress, to bar auto manufacturers from owning

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*A pessimist is one who makes difficulties of his opportunities; an optimist is one who makes opportunities of his difficulties.*

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—Reginald B. Mansell

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finance companies. Mr. Snodgrass called such legislation necessary to preserve the soundness of consumer credit. Mr. Celler was a convention speaker.

Others at the press gathering predicted that plenty of funds will be available for instalment buyers in general in 1961 but doubted that credit will be "easier".

Ray H. Matson, vice president First National Bank of Chicago, predicted that bank credit for business borrowers, such as sales finance

There would be no more assignments for the benefit of creditors since the security interest is the only one to benefit, and any conflict of security claims or debtor's equity has to be determined in court—there would be no return to unsecured creditors in bankruptcy losses.

*I cannot help but feel if the shoe were on the other foot, if Article 9 were drawn to protect the interests of the debtor and the unsecured creditor in the comprehensive ways set forth in this Article, that those who favor this bill would be strenuously opposed to the converse.*

The Code has been adopted in only the six states of Pennsylvania, Massachusetts, Kentucky, Connecticut, New Hampshire and Rhode Island. Forty-four states have not adopted it. In New York, after years of extensive examination by a Commission, it remains shelved. It has been proposed in Illinois, Ohio, Indiana and California and has met severe criticism and postponement of action. In California the Board of Trade of San Francisco, the Credit Managers' Association of Northern and Central California, the Wholesaler's Credit Association of Oakland, the Credit Managers' Association of Southern California and the San Diego Wholesale Credit Association have gone on record as opposing Article 9. It was extensively rewritten but still failed passage.

In Washington the Code was introduced two years ago and postponed for further study.

I feel we should urge upon the members of the Oregon Legislature our objections to the enactment of Article 9 as being adverse to the best interests of the business community. Before any enactment of the Article or the Code in its entirety, it should have considerable further study, and if there are some areas where specific amendments to existing laws relating to commercial transactions might be necessary, they should be sponsored and supported by credit organizations.

companies, should be generally available for suitable credit risks, and interest rates should continue at no higher than present low levels during the immediate future.

Effective controls in profit planning, said Thomas Cougill, vice president Pacific Finance Corporation, Los Angeles, must reflect the activity's needs and organization pattern, be flexible, economical, understandable, must focus attention on variables, and should assure corrective action.

Edwin W. Crysler, Jr., vice president Wellington Fund, Philadelphia, commented that finance company securities represented 3½ per cent of the 12 largest mutual funds' assets at the beginning of 1960.

Paul C. Jones, president of the A.S.C. Corporation, in Indiana, was elected executive committee chairman of American Finance Conference.

# Denver Credit Congress Speakers, Panels Promise Memorable Program

**T**HREE lively panels and a number of nationally headlined speakers are now being lined up to make the 65th Annual Credit Congress in Denver a most worthwhile and memorable occasion for all attending.

Governor Stephen L. R. McNichols will welcome the delegates to Colorado at the opening plenary session. A native of Denver, where he was born 47 years ago, Governor McNichols has held various public offices since 1940, when he was deputy district attorney.

Excepting four years leave for military service, he was special assistant U.S. attorney general in the Department of Justice Anti-trust Division from 1941 to 1948. Elected to the Colorado State Senate, he served there for the six succeeding years.

Mr. McNichols became lieutenant governor of Colorado in 1954, and has been governor since January, 1957. In that year he also was chairman of the Western Governors' Conference and, since 1959, he has been a member of the executive committee of the Governors' Conference. He is on the advisory committee of the Democratic National Committee.

During World War II, he served with the U.S. Navy in the European and Pacific theaters, rising from ap-

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## Much for All

*As current and important as Today are the topics for panel discussions at the 65th Annual Credit Congress in May. Here they are:*

"Automation for Credit — How Much How Soon?"

"The Uniform Commercial Code: Help or Hindrance?"

"Closing The Credit Data Gap Through Bank-Mercantile Cooperation."

*Authorities on each subject will present their views at plenary sessions of the Convention.*

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prentice seaman to lieutenant. He received the Bronze Star, Special Commendation, Unit Citation.

Father of three sons and two daughters, Governor McNichols is a 1936 graduate of Denver's Regis College. In 1939 he received his LL.B. degree from the School of Law, Catholic University, in Washington, D.C.

"Steve" McNichols is a member of many organizations, among them

the American Bar Association, the Elks, Moose, Eagles, American Legion, Veterans of Foreign Wars, Knights of Columbus.

Sharing the platform with the Governor will be Richard Y. Batterton, Mayor of Denver, to extend the city's greetings to the Credit Congress.

Mayor Batterton became a Colorado citizen by choice in 1932, on the conviction that the "mile-high city is the ideal place in which to live and work."

He was born in Petersburg, Ill., in 1903, and was raised on a farm. After graduation from Petersburg High School, he attended the University of Illinois and the United States Naval Academy at Annapolis, Maryland.

Moving to Denver in the early Thirties, "Dick" Batterton was in the automobile financing and sales fields for 22 years, most recently as co-partner in the McCarty-Batterton Lincoln-Mercury dealership.

During World War II, he served the Office of Price Administration as manager of Region Seven.

In 1955 he was appointed manager of public works and Deputy Mayor, an office that he held until his inauguration as Mayor on July 1, 1959.

For many years Mayor Batterton



Dean James L. Hayes



Governor S. L. R. McNichols



Mayor R. Y. Batterton

has been active in civic and community programs. He is a board member of the Wallace School and the Colorado Christian Home, an active member of Central Christian Church, a member of Colorado Consistory No. 1, El Jebel Shrine, Denver Rotary Club, Elks Club, Denver Athletic Club, Sigma Alpha Epsilon fraternity, and the U.S. Naval Academy Alumni Association.

#### *Duquesne's Dean Hayes to Speak*

One of the key speakers already scheduled to address the convention is James L. Hayes, dean of the School of Business Administration, Duquesne University, Pittsburgh. He will discuss the management skills that contribute to successful credit administration.

Born 46 years ago in Binghamton, N.Y., Dean Hayes earned his A.B. degree at St. Bernard's College in Rochester, N.Y., and his M.S. at St. Bonaventure University. He also did graduate work at Columbia University and in American Management Association courses.

In 1936, Dean Hayes became instructor in social science at the university where he had earned his master's degree. Five years later, he was appointed professor of economics at St. Bonaventure and, at the same time, became chairman of the university's Department of Business Administration. He filled both posts until 1959, when he was appointed dean of the School of Business Administration at Duquesne.

Mr. Hayes combines academic responsibilities with consultative service to business. He has done work with top management in Argentina and Colombia. Currently, he is educational consultant to the Clark Brothers Division of Dresser Industries, Inc., in Olean, N.Y. He also acts in the same capacity to Dresser Industries' Dallas headquarters.

Dean Hayes is a director of the Fancher Furniture Company in Salamanca, N.Y., and is principal lecturer in one of the units of the American Management Association's Management Course. For nine years he was an instructor at the American Institute of Banking, and he is a field advisor to the Small Business Administration.

Dean Hayes belongs to many professional organizations, among them the American Economic Association,

## Statement of Principles Is a Joint Achievement

**THE Statement of Principles in the Exchange of Credit Information between Banks and Mercantile Concerns grew out of a joint meeting Oct. 9, 1951, of committees of the National Association of Credit Management and the Robert Morris Associates.**

**The committees decided that NACM's Canons of Commercial Ethics and RMA's Code of Ethics be made the subject of extended educational programs. A panel discussion of the ethical concepts of the joint function evoked wide interest at the Credit Congress in Montreal in 1953.**

**The final product was evolved at joint meetings in San Francisco and Chicago. The Statement of Principles, drafted by Frank E. Byrne, NACM committee chairman, and the Statements of Confidence and Considerateness, drawn up by William M. Edens, RMA chairman, were adopted as a single instrument in November 1955 at meetings of the boards of directors of the two associations.**

American Association of University Teachers of Insurance, American Institute of Management, the Catholic Business Education Association, American Business Writing Association, Foreign Policy Association, and the Society for Advancement of Management.

He is the author of several publications, including "Principles, Skills and Tools of Scientific Management," published by the American Psychiatric Association Mental Hospital Service, Washington, D.C., and "Banking Needs Managers," published by the Pennsylvania Bankers Association.

#### *Panels Taking Shape*

Delegates to past conventions have shown a growing interest in panel presentations of issues important to credit executives. Three outstanding topics of significance to current credit operation are on the panels agenda for the Denver Credit Congress. They are: "Automation for Credit—How Much How Soon?", "The Uniform Commercial Code: Help or Hindrance?", and "Closing the Credit Data Gap through Bank-Mercantile Cooperation".

The panel on improved cooperation between bankers and creditors was

recommended last year, at the 64th Annual Credit Congress in St. Louis, by the National Committee on Cooperation with Robert Morris Associates.

The declared function and purpose of this committee are "to cooperate and coordinate in every possible way with the Robert Morris Associates, the commercial banking credit managers association, in relations between mercantile and bank credit executives, and to disseminate the code of ethics and procedure known as "The Statement of Principles in the exchange of information between banks and mercantile concerns."

Chairman of the committee is R. A. Larson, American Seating Company; the general vice-chairman is William M. Edens, Continental Illinois National Bank & Trust Company of Chicago. The four divisional vice-chairmen are: John A. Eiseman, The First Pennsylvania Banking and Trust Company; N. M. McMahan, Rock Island Refining Company; Ted B. Hendrick, Collins-Dietz-Morris Company; and B. F. Edwards, Jr., who retired December 31st as vice president and president's assistant-personnel, Bank of America NT&SA.

#### *Urged to Apply Principles*

At last year's Credit Congress, several thousand copies of the recommended "Statement of Principles in the Exchange of Credit Information between Banks and Mercantile Concerns" were distributed. Announcements from the committee were made by the chairmen of the various Industry Credit Groups, urging those attending the sessions to apply these principles in their day-to-day operations.

Progress was also made in the program to broaden the scope of information to be used in the Robert Morris Financial Statement Studies through the facilities of the NACM.

At its annual meeting in St. Louis last May, the NACM committee recommended that creditmen identify themselves as being NACM members by use of the "Vigilantia" seal or in some other appropriate way when making credit inquiries of banks, and that they not only state the name of their company on the inquiry, but personally sign it and enclose a stamped, self-addressed envelope for reply.

It was also recommended that a great deal could be done by local as-

sociations toward improving banker-mercantile credit relations by increased circulation of the "Statement of Principles" at the local level, and through increased allotment of time for speakers or panel discussions at local association meetings and regional conference programs.

#### *Hillman Moderator on Code*

Moderator of the panel discussion on "The Uniform Commercial Code: Help or Hindrance?" will be Ivan L. Hillman, treasurer of the Dravo Corporation, Pittsburgh.

Mr. Hillman is a director of the National Association of Credit Management and chairman of its national legislative committee. He holds degrees in economics and law, and has served on the faculties of Duquesne University and the Robert Morris School. In addition, he has the Fellow Award "With Distinction" of the National Institute of Credit. Until his election last year as treasurer, Mr. Hillman was assistant treasurer and general credit manager of Dravo, which he had joined in 1927. He holds these positions with the subsidiary Dravo-Doyle Company and is treasurer and a director of Dravo of Canada, Limited.

Mr. Hillman is particularly qualified, by position, interest and experience, to moderate a panel discussion of the Uniform Commercial Code. Six states have enacted the Code, and in 19 others Code legislation is expected to be introduced this year.

#### *The Growing Impact of Automation*

A panel on the growing impact of automation on the credit department and its functions is expected to be particularly timely at the May convention, as many companies are currently considering installation of electronic data processing equipment—and others have already had some experience with automation programs.

Ralph E. Brown, NACM president, has written an article, "How Far Can Credit Decisions Be Automated?" for the current issue of THE OFFICE magazine. Writes Mr. Brown:

"Automation has, I believe, now been sufficiently used in the office for management to understand its major advantages and limitations, and the more likely areas of further practical business application.

"It has become clear that there is, for example, a break-even point

that justifies—or does not justify—the installation of such equipment. The high cost of installation and operation tends toward limiting EDP to the need for massive data, continuously processed. But computers can only deal with what is quantitative. The qualitative decisions remain human.

"What part can computers play in credit decisions, assuming a large enough credit operation? How much of the work of the typical credit department can be entrusted to mechanical processing? Answers will vary, of course, in relation to company size, product or service, poli-

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### REMINDER!

*Entries for the ANNUAL INSURANCE PLAQUE AWARD are due April 1st. Presentation is to be made at the 65th Annual NACM Credit Congress in Denver to that Association which has shown the most outstanding leadership over the past year in promoting among its members a wider knowledge and recognition of customer hazards and applicable coverages in their relation to sound credit management.*

*Address entries to: Awards Committee, National Insurance Advisory Council, National Association of Credit Management, 44 East 23rd St., New York 10, N. Y.*

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cies, market, method of distribution, and similar factors.

"Some of the activities in a typical credit department are—or can be—importantly influenced by EDP, whether it is a complete computer system or isolated pieces of equipment to handle part of the department's data and certain routine and repetitive operations.

"And yet, there are still problems that demand better solutions before we reach the age of the fully automated credit department—indeed, if that is not in itself a somewhat Utopian concept.

"Under current study are the problems that result from what is essentially ledgerless accounting. Many credit executives feel, for instance, that losing the 'history' of an individual account hampers sound decisions, and it also makes it mechanically difficult—and costly—to

exchange payment experiences on customers with other credit managers. Some credit departments continue such work as a clerical operation, supplemental to punched card or tape handling. Others supplement it through other mechanical equipment.

"These problems need better answers. In fact, many traditional credit department procedures will be coming under closer scrutiny and review. Key questions include: Is this the only way that we can do this job, or are there other ways that would give us the same results? Does what we gain through EDP outweigh what we lose? Is all current information absolutely necessary?"

These are some of the questions that will be asked, argued, and answered at this important panel discussion on automation this May in Denver.

#### *Wallace E. Jeffrey Honored on Consumer Credit Anniversary*

Wallace E. Jeffrey, vice president of Marsh & McLennan, Inc., has been honored by the National Committee for the 50th Anniversary of Consumer Credit in Commercial Banks, for "leadership and dedication in contributing to the constructive growth of consumer installment credit in the commercial banks of the United States".

The recognition was expressed in the form of a parchment scroll presented in connection with the 50th Anniversary banquet in New York. Among the signatories was Carl A. Bimson, president of the American Bankers Association and president of the Valley National Bank, Phoenix.



W. E. JEFFREY

#### *James D. Stewart Dies*

James D. Stewart was president of the Collection and Adjustment Bureau, Inc., of the Western Massachusetts Association of Credit Executives, and past president of the association. Mr. Stewart was treasurer of Judd Paper Company in Holyoke, with which he had been associated since 1931.

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*The reason experience is such a good teacher is that the pupil can't cut any classes.*

—Changing Times

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### Chicago's Credit Women Hear Ten Panelists on Management

Panel discussions on office management and credit management, with ten speakers, highlighted a Workday gathering sponsored by the Credit Women's Club of Chicago, affiliate of The Chicago-Midwest Credit Management Association. Eighty attended.

After the call to order by Chairman Willa Monson, of Ditto, Inc., and invocation by Antoinette Rehrauer of Peerless Confections, past chairman of the National Credit Women's Executive Committee, NACM, the participants in the session were greeted by Ollie Smith, of Dearborn Chemical Company, president of the Chicago credit women's organization.

Alice Marshalek, of Sola Electric Company, Division of Basic Products Corporation, was moderator of the panel on office management. Speakers and their subjects were: Fern Auge, Peerless Confections, "Setting Sights for Office Management"; Bernice Kaberna, Dearborn Chemical Company, "Dealing with Office Personalities"; and Freda C. Moll, New City Iron Works, "How the Office Manager Helps Management".

After a question-and-answer period and a coffee break, the panelists on "Credit Management" were introduced by the moderator, Lydia Behm of Central Steel Warehouse Company.

Training credit department personnel was the topic of Emily Davidson, and suggestions for the handling of the marginal account were advanced by Marguerite Higgins, both retired. Marjorie V. Guthat, CPA, spoke on financial statement analysis.

"Care and Feeding of Preferred Accounts" was the theme of Catherine Boland of John A. Roebbling's Sons Division of Colorado Fuel and Iron Corporation. Mable K. Lane, Pick-Congress hotel, revealed "Tricks in Collections".

Irene Goldthwaite of Melville Confections, Inc., was the luncheon speaker, her topic "Fashions in Fall Flowers".

## Dr. Peter C. Peasley Named NACM's Director of Education and Research

Peter C. Peasley, Ph.D., has been appointed director of education and research, National Association of Credit Management. He was associate professor of finance, Hofstra College, Hempstead, N.Y.

Dr. Peasley, author, lecturer, and financial consultant to banks and commercial companies, received the degree of doctor of philosophy in economics and finance in 1955 and master of arts degree in economics and political philosophy in 1948 from Fordham University's Graduate School of Arts and Sciences, and his bachelor of science degree from Fordham College in 1943.

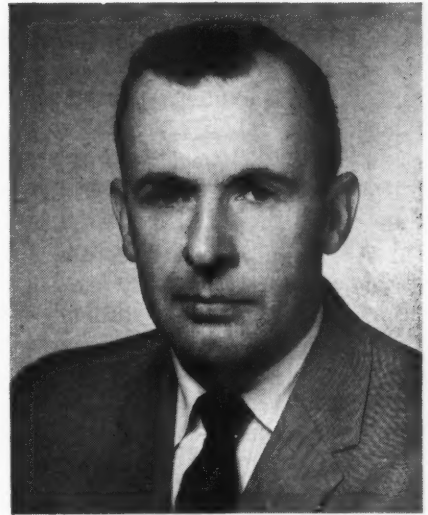
He was financial advisor to Hofstra College Bureau of Business Research; assistant professor of finance, Fordham University School of Business; chairman of University Research in Industrial Economics; chief, Import-Export Division, Office of Military Government of Bavaria, after serving as a Captain, U. S. Army, artillery battery commanding officer, in the European Theatre of Operations in World War II. He was an expert witness before the Federal Reserve Board and the New York State Banking Commission on revision of the banking laws.

In the last five years Dr. Peasley has been financial consultant or advisor to the following: Franklin National Bank, Meadowbrook National Bank, and Nassau County Clearing House (expert witness and writer); Parameters, Inc., and Tigris, Inc., Long Island electronic companies, on working capital problems; and American Kleer-Vu Plastics, Inc., as advisor to the president on merger arrangements. For First Investors Corporation he trained mutual fund salesmen for examinations of the National Association of Securities Dealers, Inc. For Newborg and Company, brokers, he has presented a series of 16 lectures on securities and investments annually since 1957.

His publications include:

"The Investment Company Act of 1940: Background, Critical Appraisal and Recommendations for Change", Ph.D. dissertation;

"Foreign Trade and Exchange Controls of Germany, 1931-1948" (A



*Dr. Peter C. Peasley*

synopsis was published as a guide to businessmen by the United States Department of Commerce);

"Adequacy of Banking in Nassau County", published by the Nassau County Clearing House;

"Dollar Averaging and Your Investments", Long Island Commercial Review;

"Bank Reserves and Your Business", published in the Long Island Commercial Review and later entered in the U. S. Congressional Record.

Dr. Peasley was born in Englewood, N. J., in 1922. Mr. and Mrs. Peasley live in New Hyde Park, N. Y., and have two children.

### F. R. Pinter Named Chairman Foreign Credit Interchange

Frederick R. Pinter, president of Overseas Export Corporation, with offices in New York and Rome, Italy, has been appointed chairman of the Foreign Credit Interchange Bureau, NACM. Mr. Pinter is also president of Overseas Import Corporation.

Named vice chairmen are:

Sylvester F. Majestic, assistant vice president of Chemical Bank New York Trust Company, and

Meredith C. Price, manager of credit and accounting, The Sherwin-Williams Company.

## LEDBETTER—GALLEN

(Concluded from page 9)

mation concerning the security interest may be obtained, gives a mail address of the debtor and contains a statement indicating the types, or describing the items, of collateral . . . When the financing statement . . . covers goods which are or which are to become fixtures, the statement must also contain a general description of the real estate concerned and the name of the record owner thereof." Sec. 9-402.

As mentioned earlier, the procedure requires that only one financing statement need be filed to cover the entire course of business with a particular debtor. The financing statement need not reveal anything as to the value of the goods financed or the amount of credit extended. However, a copy of the contract between the parties may be used as a financing statement if it contains the required information.

It is highly desirable that creditmen always include the word "proceeds" in their financing statement covering inventory, because insertion of the word will cause the statement to cover all types of proceeds. Except for a ten-day period immediately following the receipt of the proceeds by the debtor, the word is necessary in order to protect your security interest in proceeds.

Once filed, a financial statement will be effective for five years unless an earlier maturity date is specified. Even in the latter case, the filing will remain effective for sixty days after the specified maturity date. A continuation statement may be filed prior to expiration date and a termination statement may be furnished the debtor by the secured party if the debt has been paid and if such a statement is demanded in writing by the debtor.

The Code provides that a debtor may obtain, without charge, a current statement of his indebtedness once every six months. If the debtor wishes to have statements more frequently, the secured party may charge up to \$10 for each additional statement.

The financing statement is such a spectacular feature of the Code that some persons mistakenly attribute to it a greater effect than it actually has. A financing statement

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**WILLIAM J. LEDBETTER** is an attorney-corporate legal operation, in the Legal Services Division of General Electric Company. One of his clients is Credit and Collection Service of General Electric's Treasury Services Division. Mr. Ledbetter was graduated magna cum laude from Washington and Lee University, where he was editor-in-chief of the Law Review. Before joining General Electric, he was associated with two law firms in New York City.

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confers substantially no rights upon the secured party. The secured party's rights as against the debtor depend upon the terms of his specific agreement with the debtor. If a particular right is not stated there, the creditor does not have it, regardless of what the financing statement says. The entire function of the financing statement is to give notice to a would-be creditor of the existence of a prior security interest in the debtor's property.

### What Law is Controlling

One of the major purposes of the Code is to establish uniformity among the laws of the various states relating to commercial transactions. Its sponsors have, however, recognized that complete uniformity will not be achieved for a long time—if ever. Therefore, while Article 9 provides generally that it shall apply to transactions involving personal property or fixtures within the jurisdiction of any state where the Code has been adopted, it also provides some specific rules for determining what law shall govern certain security transactions which have connections with more than one state, some—but not all—of which have adopted the Code.

Accordingly, a creditman cannot assume that the Code is not of direct concern to him merely because his state has not yet enacted it. In the case of tangible goods, for example, the Code provides that the law of the state where the goods are to be kept governs the validity of a security interest in them.

For equipment which is normally to be used in more than one state, the Code specifies that the validity of any security interest shall be governed by the law of the state where

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**ALVIN GALLEN**, legal counsel for General Electric Credit Corporation, attended Cornell and Yale Universities, then served as a law clerk to U. S. Judge Charles Clark of the Second Circuit. He subsequently was associated with a New York law firm, the National Labor Relations Board and the Office of Price Stabilization. He joined General Electric Company in 1952 as an attorney with the Electronics Division in Syracuse, New York.

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the "chief place of business" of the debtor is located.

In the case of accounts or contract rights, the Code provides that the governing law shall be that of the state where the office in which the assignor keeps his records is located. Other special provisions are applicable where the property in which a security interest has been given is subsequently carried from a non-Code state into a Code state. A creditman would be well-advised, therefore, to consult his counsel.

### Conclusions

Although there are some who strongly object to Article 9, it does seem that the Article provides a sensible solution to many of the difficult problems of extending credit on a secured basis. Certainly, uniformity of state laws governing commercial transactions is a desirable end in itself. On the other hand, some of the concepts embodied elsewhere in the Code merit serious consideration. For example, in Article 2, the provisions relating to warranties in the case of consumer goods sharply accelerate the recent drift of the law toward a rule which would hold a manufacturer absolutely liable for damage resulting from the use of his product whether or not it can be shown that the damage was caused by any negligence in the manufacture of the product.

A weakness, even in Article 9, which might affect some businesses is that non-assignment clauses are made ineffective, that is, a company cannot control whether or not its purchase orders will be assigned by its vendor who is also a customer. Therefore, under the Code, the right to assign freely eliminates the right of set-off following assignment.



**WILLIAM G. STRATTON** (center), then governor of Illinois, was the speaker at the 64th annual fall dinner of the Chicago-Midwest Credit Management Association. At the left is **William G. Lampe** of Abbott Laboratories, chairman of the meetings and education committee; at right, **Orville B. Tearney**, Inland Steel Company, association president.

## CALENDAR OF EVENTS IMPORTANT TO CREDIT

**SEATTLE, WASHINGTON**  
March 15-17

Conference of the Credit Executives of the Pacific Northwest, including Idaho, Oregon, Washington, and British Columbia

**DENVER, COLORADO**  
May 11-13

NACM Secretary-Managers Annual Conference.

**DENVER, COLORADO**  
May 14-18

65th Annual Credit Congress

**CHICAGO, ILLINOIS**  
September 21-22

Great Lakes Regional Credit Conference, including Illinois, Indiana, Michigan and Wisconsin

**HOUSTON, TEXAS**  
October 15-18

37th Annual Conference of American Petroleum Credit Association

**ATLANTIC CITY, NEW JERSEY**  
October 26-28

NACM Eastern Division Credit Conference

**FORT WORTH, TEXAS**  
October 26-28

Annual Southwest Credit Conference, including Texas, Arizona, Arkansas, Louisiana, New Mexico and Oklahoma

**HOLLYWOOD-BY-THE-SEA, FLORIDA**  
November 12-15, 1961

Forty-Seventh Annual Fall Conference of Robert Morris Associates

### Moran Cites Credit-Sales Aim: Develop Marginal Accounts

Importance of close cooperation between the wholesaler's credit manager and its sales department was underscored by Edwin B. Moran, former executive vice president NACM, in addressing the 66th annual convention of the Central Supply Association, in Chicago.

The two departments should have a common objective to develop marginal accounts into profitable and dependable customers, Mr. Moran said.

*If the power to do hard work is not talent, it is the best possible substitute for it.*

—James A. Garfield

### Weems Is Secretary-Manager Of Mid-South Unit, Memphis

James D. Weems, newly named secretary-manager of National Association of Credit Management, Mid-South Unit, Memphis, comes to the affiliated organization from the Alabama Association of Credit Executives, Birmingham, where he was assistant manager and collection manager. He succeeds J. Herbert Bryan, resigned.

Mr. Weems, whose earlier experience in credit work included two years in the consumer finance field, attended Jacksonville (Ala.) State College.



J. D. WEEMS

## Personnel Mart

### CREDIT EXECUTIVE

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Available Feb. 1st

12 yrs. experience, 35 yrs. of age. Analytical background. Steel Warehouse; Collection Agency; Wholesale & Retail. For Resume, write CFM Box #530.

and usage; and a half-dozen sections of the Ohio Revised Code.

Article 4 may be said to establish well defined patterns of operation which are now existing in fact, but which have not been codified by any comprehensive statutory scheme. Problems which may arise from the relationship between a paying bank and its customer or the bank collection process are thoroughly covered by this Article.

#### *To Facilitate Use of Letters of Credit*

Article 5 deals with an area in which there has been virtually no statutory regulation and very few decided cases. This is due in part to the fact that, in the past, letters of credit were not widely used and those parties who do use this device are experts in this field. It has been estimated that 90 per cent of the use of letters of credit in this nation is in the overseas trade—an area of growing importance in Ohio.

Article 5 is designed to facilitate the use of this device and includes provisions setting forth the rights and duties of parties to the letter.

#### *Bulk Transfers*

Article 6 consists of a new proposed uniform law governing transfers of a substantial part of the inventory or equipment of a merchant outside the ordinary course of business. This Article is designed to face the problem created by a merchant in debt who sells his stock in trade to anyone and then leaves the jurisdiction while his creditors remain unpaid. To meet this possibility, advance notice to creditors of an impending transfer is needed. *Bulk transfer laws exist in every state today, but they vary widely in the type of transfers and businesses covered, the extent of the protection given, and the procedural details.*

In general, Article 6 adds certain exemptions to these sections, gives the creditor more time in which to act, gives him more knowledge upon which to act, and spells out more clearly the requirements which must be met by a transferee.

#### *Modernizing Existing Statutes*

Article 7 is a consolidation and revision of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, and also embraces certain sections of the Uniform Sales Act which cover the negotiation of documents of title. The number of changes of prior law to be found in this Article is not substantial and, basically, Article 7 is a consolidation and modernization of existing statutes and decisions.

Article 8 treats bonds and stocks together, on the theory that the same problems of issuer's defenses, prior claims of ownership, and the process of registration exist for both types. This Article has given all types of investment securities the basic attributes of negotiability and has set forth clearly the responsibilities and rights of the issuer, the broker, the purchaser and other parties to such transactions. The normally complex and often frustrating registration procedure where fiduciaries are involved has been greatly simplified.

Article 9 is one of the most important and far-reaching

articles of the Commercial Code. Article 9 provides a simple and unified structure within which the immense variety of present day secured financing transactions can go forward with less cost and with greater speed. In order to do this, Article 9 sets forth a comprehensive scheme for regulation of all types of security interests in both tangible and intangible personal property.

Troublesome and often meaningless distinctions between these devices, relating to formal requirements, the secured party's rights against third person's, debtor's rights against the secured party, and filing requirements, have been abolished by this Article. In line with the policy of the Code that distinctions should be made along functional rather than formal lines, such distinctions that depend upon the location of title to the property have also been eliminated. Instead, the Code makes distinctions between the various types of property which constitute the collateral.

*One of the great benefits of the Code comes from the reforms made in the area of secured transactions. At the present time, there is no one way in which a manufacturer, for example, can give security in both his equip-*

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#### *States in Which Code is Expected to be Introduced in 1961 Legislative Sessions*

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Arkansas  
California  
Illinois  
Indiana  
Kansas  
Maine  
Maryland  
Michigan  
Missouri  
Montana

New Jersey  
New Mexico  
North Dakota  
Ohio  
Oklahoma  
Oregon  
Washington  
Wisconsin  
Wyoming

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ment and inventory or stock in trade. We have under the existing Ohio law, chattel mortgages, conditional sales, trust receipts, factor's lien and accounts receivable. Each of these devices must be used with caution and is often not available for a specific type of financing. Under the existing Ohio law, after-acquired property may be used as a basis for security in certain limited areas. The concept is not new to Ohio, but its use is severely limited by statute to certain areas. These limitations are based primarily upon historical accident and the chaotic manner in which our security law has developed. *The Commercial Code provides a simple system with formalities reduced to a minimum, which can be used by economic vendor or financier alike and which will cover inventory and equipment presently owned or after-acquired.*

#### *Sees Lower Cost of Financing*

By recognizing as entirely respectable the taking of security in personal property, by placing as few obstacles as possible in the way of the secured party in taking and keeping security and in providing a simple, well organized and comprehensive system, the cost of financing to the manufacturer and the retailer alike will be reduced and the need for cumbersome and often dangerous financing contrivances will be eliminated.

The fundamentals of any system of securing personal property are simply ones of conferring upon a particular creditor a priority in certain property against the risk of insolvency and the providing of the means of notifying competing creditors of the secured interest either by

possession or by some other feasible means such as filing. Article 9 is based on this approach. A simple agreement is needed to create the secured interest and the means of notifying competing creditors are not complex. To avoid confusion with older concepts, a single set of new terms is used to cover all types of cases.

It should be noted, however, that to avoid any unnecessary break with the past, Article 9 specifically provides that if any prior form of instrument meets the simple fundamental requirements of Article 9 it can still be validly employed regardless of what it is called. This simply means that after the effective date of the Commercial Code, a chattel mortgage form may still be used to give a valid secured interest under the Commercial Code.

#### ***The Floating Lien Problem***

Perhaps the only substantial question raised on the Code is in regard to the floating lien problem. The floating lien refers to the situation where a secured party may obtain a lien on all the assets of the debtor regardless of whether he now owns them or is in possession of them to cover present and future advances simply by the filing of a financing statement. This objection was based on both "economic" grounds and grounds that the lien would not stand up in bankruptcy. These arguments, however, somewhat overstated the position of the Commercial Code, and on the other hand ignored existing provisions in Ohio law which to a large degree already permit this type of financing.

Under the Code, the after-acquired property clauses are not valid as to consumer goods unless the debtor acquires rights within 10 days after value is given. A further limit is made as to crops. Also, provisions are made to protect purchase money security interests, a buyer in the ordinary course of the collateral, a holder in due course and a person having lien for services.

*Under Ohio law, a lien may be obtained on collateral which may be subsequently obtained. It is true that this cannot be done by chattel mortgage because of the description requirements. However, there are two exceptions to the present chattel mortgage law. One of these recognizes mortgages on crops to be planted within a year from the date of the mortgage and the second relates to railroad and public utility mortgages.*

It is clear that future accounts may be financed under the accounts receivable act and inventory may be financed under the factor's lien act. The factor's lien act is somewhat similar to the Commercial Code in regard to this type of financing. Reference should also be made to the provisions of the Ohio Trust Receipts Act which was enacted in 1957, particularly in regard to the provisions on notice filing and priorities.

Every indication from the states of Pennsylvania and Massachusetts discloses that there has been no monopolization of available credit. The technical objection in regard to bankruptcy was also raised. Under the 1950 amendment to Section 60 of the Bankruptcy Act the trustee in bankruptcy was put into the position of subsequent lien-holder.

In general, the applicable state laws are followed as to the perfection of secured interests. The lien created will be upheld in bankruptcy proceedings provided that the lien by virtue of the state laws is superior to a subsequent lien obtained by legal process. It might be noted

in passing that should the lien created by the Code not stand up in bankruptcy the same results would be reached under our existing factor's lien act and accounts receivable act. It should be stressed that there is nothing in the Commercial Code which requires parties to tie up the debtor's collateral with one secured party. Contact with creditmen in other states shows satisfaction with the provisions of Article 9.

The provisions of Article 9 making credit easier for smaller businesses will simply be another step forward in assisting the economic growth of this state, and will keep Ohio in line with other states that have or will enact the Commercial Code.

The enactment of modern simplified commercial laws would seem to be essential to Ohio to maintain commercial leadership. It is hoped that the Code will have the support of all groups that may be affected and that the Code will be enacted by the 104th General Assembly.

#### **ZOLLINGER**

#### **CONCLUDED FROM P. 30**

experience in Massachusetts was repeated in Kentucky. There was no difficulty in transition.

The Code has been enacted in Connecticut and New Hampshire, to become effective later this year, and in Rhode Island, effective in 1962. There is very little room for doubt that it will be enacted in 1961 in Ohio.

Bills for enactment have been introduced in other state legislatures. Such a bill was introduced late in the 1959 session in Washington, mainly to get people started thinking and talking about it with a view to enactment in 1961. There is a good chance for enactment in the forthcoming session.

#### ***Wide Support Cited***

Proposals for enactment have received very wide support. It is in the interest of everyone—the manufacturer, the wholesaler, the retailer, the banker and, perhaps most of all, the consumer—that commercial law shall be clear, complete, consistent within itself, in harmony with modern business practices and needs, and uniform throughout the United States. Sponsorship comes from all these sources.

The first name on the list of those who petitioned the Connecticut legislature to enact the Code was that of the Connecticut Association of Credit Men and the last name on the list was the Waterbury Association of Credit Men. The Code is not "special interest" legislation. It receives merited support from many sources which, in other fields, are frequently opposed to each other. They recognize that their mutual interests are served by clarifying the law of commercial transactions, bringing it up to date and working toward uniformity.

The Code will be introduced for consideration of the Oregon Legislature early in the 1961 session. Legislative counsel has prepared a bill, including the necessary repealer clauses, for consideration. The Oregon State Bar and the Oregon Bankers Association have adopted resolutions favoring enactment. Other organizations have indicated that they will support the bill. So that everyone may have ample opportunity to become familiar with the law, if enacted, it will be given a remote effective date, some time in 1963.

I hope this Association will join with others in expressing to the Oregon Legislature its recommendation that the Code be enacted.



O. E. BARNUM



D. N. VOGT

## Executives in the News



B. E. ESTERLY



M. C. RICKETTS



G. O. STANLEY



G. D. WHITLOW

### **O. E. Barnum Treasurer of U.S. Steel Homes Division**

ORRIN E. BARNUM has been named treasurer U.S. Steel Homes Div., in addition to his duties as treasurer American Bridge Div., United States Steel Corporation, Pittsburgh. A vice president Credit Association of Western Pennsylvania and a leader in credit education, Mr. Barnum currently is serving as vice chairman of NACM's Credit Research Foundation committee on professional development and education, and chairman administrative committee Graduate School of Credit and Financial Management, Dartmouth.

### **From Foreign Advertising To Accounting and Credit**

Army enlistment in World War I and college study (B.Sc. Ohio Wesleyan U., 1919) preceded the business career that began in the foreign advertising department of Goodyear

Tire & Rubber Co. for Dana N. Vogt, president Columbus (Ohio) Credit Association. Mr. Vogt, since 1932 credit manager of Borden's Moores & Ross, Columbus, started in 1922 in the accounting department of Moores & Ross Dairy, which later became affiliated with The Borden Co. Mr. Vogt is past president Columbus Toastmasters Club, board member University Community Association.

### **Honors to Ohio Executive Who Began as Schoolteacher**

Minor C. Ricketts, who began as a public school teacher, is the new president Dayton Association of Credit Men. He is branch credit manager Frigidaire Sales Corporation, Dayton. In 1959 at the National Credit Congress in Dallas, Mr. Ricketts received the annual award of the Royal Order of Zebras for outstanding performance in membership gains.

Educated at Ohio State U., Mr. Ricketts served as office manager in various midwestern National Cash Register offices before going with Frigidaire in 1928. Assignments followed in credit, advertising, sales planning and business management at different locations of the company.

### **B. E. Esterly Is Named to New Post at Cooper Tire**

Bruce E. Esterly, since 1958 vice president and controller Cooper Tire & Rubber Company, Findlay, Ohio, has been named financial vice president and secretary-treasurer. He began with the company as an accounting clerk in 1946, following service with the Third Army in Europe as captain, artillery. He advanced to assistant treasurer 1950, assistant secretary and treasurer 1953, controller

1955. Immediately following graduation from Bowling Green State University (B.S., 1942), he was with the Office of Price Administration, Washington, as junior business analyst.

### **From Farm to Banking; Now Vice President Steel Unit**

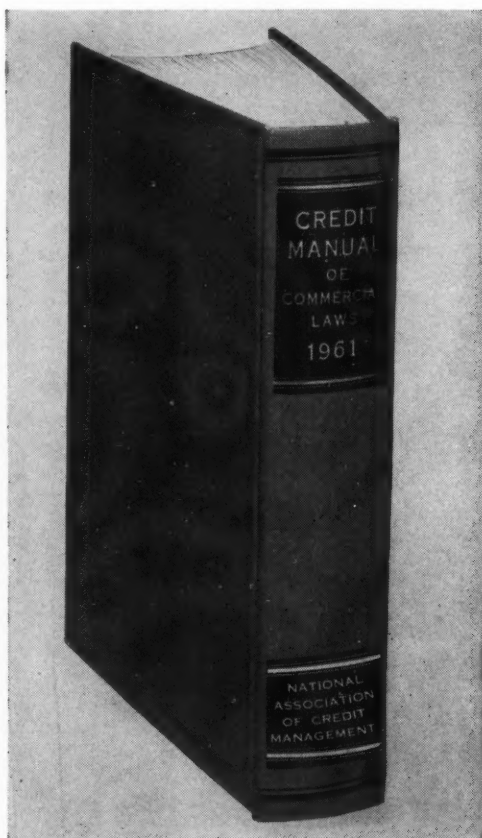
Native Tennessean G. O. Stanley, new president Nashville Association of Credit Men, is vice president and treasurer of Mid-State Steel, Inc., Nashville which he with three others organized ten years ago. From the farm near Nashville Mr. Stanley went on to studies at David Lipscomb College, Vanderbilt U., and U. of Tennessee extension school, then into banking when World War I and active Navy duty intervened. A period in cotton brokerage preceded a 35-year "interval" in the appliance industry, begun as foundry superintendent and culminating as executive vice president and sales manager.

### **Executive of Mortgage Servicing Organization**

Gene D. Whitlow, 35-year-old assistant vice president Magic City Mortgage Company, recently named president Roanoke (Va.) Association of Credit Men, is a director in Home Building & Saving Association of Roanoke, director Roanoke Home Builders Association, director and member Roanoke County Sanitation Authority. He is immediate past president and incumbent vice president of church council St. Philip Lutheran Church.

Mr. Whitlow was graduated from Virginia Polytechnic Institute. In 1951 he began with the mortgage servicing organization whose operations cover Virginia, West Virginia, Tennessee and North Carolina.

# Do You Know??



- . . . . HOW a new amendment to the United States Criminal Code protects you against concealment of assets by individuals in contemplation of bankruptcy?
- . . . . HOW the latest Social Security amendments expand and increase federal aid to states and to individuals?
- . . . . WHAT states have special statutes bearing on instalment selling practices and how they can affect your credit operations?
- . . . . HOW a United States Supreme Court decision makes a company's interstate transactions a target for state and local Sales and Use Taxes?

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